5-2-86
Vol. 51 No. 85
Pages 16281-16484

Federal Register

Friday
May 2, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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

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

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey, 202-523-3517

Contents

Federal Register
Vol. 51, No. 85
Friday, May 2, 1986

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 51, No. 85
Friday, May 2, 1986

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 273]

Food Stamp Program; Alaska Thrifty Food Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On May 1, 1984, the Department issued an interim rule establishing separate food stamp allotment levels for rural and urban Alaska. Comments were solicited from interested parties through July 2, 1984. On April 8, 1985, the Department issued a final rule which announced that rural and urban allotment levels in Alaska would remain unchanged, but that new levels would be considered when data became available to establish them. This action required new allotment levels in rural and urban Alaska, based upon a Settlement Agreement in *Vera Nevezeroff, et al. v. John R. Block*, U.S.D.C. Alaska, No. A–85–263. [These rules are to be implemented, construed and interpreted in a manner consistent with the terms of that Settlement Agreement.)

DATE: This rule will be effective April 1, 1986.

ADDRESS: Questions or comments should be directed to Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This rule will not have significant adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this rule as "not major". Adoption of this action would result in Alaska allotments that are more representative of food costs in the State.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Public Law 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This regulation does not contain reporting or recordkeeping requirements subject to approval of the Office of Management and Budget under the Paperwork Reduction Act.

Final Rule

This rule is based on a Settlement Agreement approved by the United States District Court, District of Alaska. Notice and comment rulemaking is unnecessary and contrary to the public interest. The Settlement Agreement is based, in part, on extensive State-wide solicitation of public comment and a review of that public comment. A notice soliciting public comment was sent to food stamp recipients in Alaska, was posted by fee agents in Alaska, and was published in Alaska newspapers of general circulation.

This rule is effective April 1, 1986. The State of Alaska and Alaska Legal Services Corporation have agreed that Alaska will begin implementing the Settlement Agreement on April 1, 1986. Since rapid implementation of these improvements in program operations is in the public interest FNS has determined that good cause exists to make this rule effective on April 1, 1986.

Background

The Agriculture and Food Act of 1981 (Pub. L. 97–98), enacted on December 22, 1981, provided, in part, for differing allotment levels for rural and urban Alaska to recognize significantly higher food costs in rural Alaska. On May 1, 1984, and on April 8, 1985, the Department issued interim and final rules, respectively, implementing this provision of law. A full explanation of the rationale and purposes of those rules was provided when each was published. (See 49 FR 18458–18463 and 50 FR 13759–13761). In the April 8, 1985 final rule, the Department noted that efforts were being undertaken by the State agency, and others, to supply more up-to-date food price data for additional areas of the State. The Department noted that these data might ultimately provide sufficient information to warrant a reconsideration of the Department's initial decisions. Therefore, the Department made a commitment that when these data became available the Department would review them and determine the need for a reassessment in the methodology for establishing urban and rural allotments. In the meantime, a legal action was filed against the Department by several Alaska food stamp recipients who asserted that some areas designated as urban (low cost food areas) by USDA should have been designated rural (high food cost areas). USDA strongly contended that the rules establishing the rural and urban areas in Alaska were

proper, but that forthcoming food cost information might indicate that changes in the rules would improve the efficiency of the program in Alaska. This new information became available after the legal action was filed.

After reviewing the new data, USDA met with plaintiffs' counsel (Alaska Legal Services Corporation), the Alaska State agency, and the University of Alaska Cooperative Extension Service to consider and discuss discrepancies between the new data base and other information available to USDA and to obtain information concerning areas not covered in either the new data base or the data base used to promulgate USDA's original rules.

The result of this meeting, as well as extensive subsequent discussions, was an agreement among all parties as to which areas of the State were low cost food areas and which areas were high cost food areas. The U.S. District Court for Alaska, based on input from all parties and on public input, approved the Settlement Agreement on January 30, 1986.

Data Base Background

In the Department's previous rules, the Department used data from the State Division of Personnel (SDP) to establish food costs in the State's county equivalent areas.

The data base from the SDP covered a larger proportion of the State than other data bases. It contained food cost data for county equivalent areas which represented 95 percent of the population within the State. For the remaining 5 percent of the population, there was a compatible data base available from the Alaska Department of Commerce. However, the SDP data base was from 1976, and the Department was aware that salient changes might have occurred since then which were not reflected in these data. Although the Department had been advised that the State agency planned to develop a more up-to-date data base, that data base would not be available for some time after the final rule was published, and the Department did not have sufficient advance information to determine whether the forthcoming data base would be suitable to establish Alaska allotments. Therefore, based upon all of the information actually available when comments on the Alaska Thrifty Food Plan (TFP) rule were being considered, the Department concluded that it was necessary and in the public interest to issue a final rule based upon the best data base that existed.

The SDP data were judged to be preferable to other data bases because they were from a single point in time and because they provided broader coverage of the State. At the same time, the Department made a commitment to review and assess the State agency data base when it became available. In keeping with that commitment, the Department maintained close contact with the State agency and made an ongoing effort to assess and comment upon the survey while it was in process and to review the survey data as they became available. Several areas of concern had to be addressed and resolved before these data could be used, and the Department worked closely with the State agency, plaintiffs' counsel, and the Cooperative Extension Service in resolving them.

County Equivalent Concept Background

In the May 1 rule, the Department used the 23 county equivalents in Alaska as the geographic units upon which to base the designations of urban and rural. The Department did not have sufficient data to make a place-by-place designation of urban or rural, and the county equivalent concept was thought to ease the administrative burden of administering the dual allotment system.

Each county equivalent area was designated as either urban or rural based on whether its food costs (weighted by food stamp participants) were comparatively high or low. Thus, an entire county equivalent area would be designated urban, even though a small place within that area had very high food prices because places with lower food stamp participation were given less weight than higher participation places in the Department's mathematical equation. Likewise, an entire county equivalent area would be designated as rural even though a small place within it had relatively low food prices.

Since the Department's initial rules were promulgated, the convergence of two factors warranted a reconsideration of the county equivalent concept. First, the existence of the new data base greatly increased the number of areas for which the Department has food price data, thereby making it possible to make more precise determinations of urban and rural status. Secondly, the State agency acquired a new computer system which will enable them to make accurate place by place determinations of urban or rural status.

Data Base Description

The new data base is described in a survey report entitled, "What does it Cost in Alaska?" dated June 1985. This survey was conducted by the University of Alaska-Cooperative Extension Service (CES). A copy of this survey is available for review at the Department. Copies may be obtained from the Cooperative Extension Service, University of Alaska, Fairbanks, Alaska 99701.

Data were collected in 26 communities throughout Alaska between September 1984 and May 1985 on a food list similar to the USDA TFP described at 48 FR 34700–34702, July 29, 1983. An index of food costs in each community was obtained by comparing each community's surveyed food costs with a "derived" TFP for Anchorage that equalled 81% of CES's low cost food plan costs.

There were salient differences between CES's survey methods and USDA's, which had to be considered before the CES data could be used, however. CES modified the food list USDA used, and collected information for as few as 24 percent of the foods on the list. In addition, the methods used to collect food price information in the Alaska survey were different from those used to establish the TFP. In the national plan, the prices collected reflect differences in container sizes, brands, quality of food and price levels of different stores, so that average prices paid for foods are more closely approximated. However, the Alaskan prices were gathered from the three high-volume supermarkets in each community; and they were collected for the lowest priced item, regardless of brand or size of package. Thus, food prices *seemed* to be understated in the new survey, although this could be quantified only for Anchorage, where costs for the "TFP" calculated by CES were 16 percent below those of the TFP calculated by USDA based upon data collected by the Bureau of Labor Statistics (BLS). Furthermore, the 26 communities surveyed were surveyed at different points in time, making place-by-place comparisons somewhat imprecise. Finally, the CES survey did not cover all areas of the State. The survey covered 26 communities, representing 1.7 percent of the State's population and 64 percent of the Census Regions; but more than one-third of the State's 22 Census Regions were not represented at all.

The most troubling problem area was the apparent understatement of food prices. The differences between CES's modified market basket and USDA's market basket were not great enough to account for a 16 percent difference in cost. Yet, the magnitude of this difference called into question the validity of one or the other survey.

After consultation with the State agency, CES and within the Department,

the Department developed a hypothesis why CES's derived food costs in Anchorage were lower than the costs collected by the BLS. The BLS method of obtaining average prices paid resulted in higher costs in Anchorage because the lowest-unit price-items were not necessarily selected by their shoppers. Shoppers for CES, on the other hand, consistently selected the lowest-priced items, including those on sale and low-unit-price items. Since Anchorage is a competitive market that includes stores likely to have sales on various items and several sizes of items to choose among, the CES methodology would always result in a lower-cost market basket compared to the BLS procedure. However, in areas other than Anchorage, where there is less competition among stores (sometimes there is only one store in an area) and less selection among food items (sometimes only one size is available), there would not be differences between "lowest prices" and the "average prices" paid. Therefore, CES costs for areas other than Anchorage could be used directly, because they were most comparable to those that would have been obtained had the BLS method been used. However, Anchorage TFP costs imputed by the CES could not be used to establish urban and rural allotments because they were too low. Therefore, the Department decided to continue using Anchorage costs for the TFP as calculated using BLS data, as the base number to establish a food price index for purposes of making an urban or rural designation. The Department believes this results in a more accurate representation of food costs in rural areas compared to Anchorage costs.

In addressing the other areas of concern, the Department made the following decisions:

It decided to use all of the CES survey data (except as already noted), even when only a portion of the market basket was priced or when the food list itself was modified, but it worked closely with the State agency and with CES to assess the validity of the resultant numbers. Thus, the Department learned that certain items simply were not available in some areas, and that comparable food items were substituted using a consistent methodology. Also, the Department asked the State to collect more data in some areas.

The Department decided to combine the CES survey data base with the data base originally used by the Department to calculate urban and rural allotments (the SDP data base). The result is a "merged" new data base, which covers every Census Region within the State and enables the Department to make more precise designations of urban and rural.

Finally, the Department decided to use December 1984 Anchorage TFP costs as the base from which to compute index numbers from the CES survey. December 1984 is close to the midpoint of the CES survey time period and is the reference time period designated by CES.

Urban-rural definition

After reviewing the numbers obtained in the merged data based and consulting with the State agency, the Department decided that it would be appropriate to make some place-by-place designations of food costs, as well as to establish two rural allotment levels. Rural I allotment levels are higher than urban levels, and rural II allotment levels are higher than rural I, reflecting significantly higher food costs in some rural areas.

The Department's designation of each county equivalent or smaller geographic entity as urban, rural I, or rural II, is based larged upon food costs in those areas as shown in the two data bases, and after consultations with the State agency, the CES, and the Alaska Legal Services Corporation. In general, rural II areas are those places which currently are designated as rural, except that parts of the Aleutian Islands are redesignated as rural II, and one place in the Yukon-Koyukuk Census Area is redesignated as rural I. Some places which are currently urban are redesignated as rural I. (These places have food costs significantly higher than Anchorage, but not as high as in the rural areas.)

After aggregating places in the State into the urban, rural I and rural II areas, the Department calculated three weighted averages of food prices—one each for urban, rural I, and rural II areas. Then the weighted average food costs were compared to Anchorage costs to establish a differential for urban, rural I, and rural II allotments. This is the same methodology as was used in the current rules, except that the data base is now larger and the Census Region concept essentially has been abandoned. The new urban differential is 1.0079 percent higher than costs in Anchorage alone. It is lower than the current 6.4 percent urban differential, reflecting the results of pulling out some of the higher priced areas and redesignating them as rural I or rural II. The new rural I differential is 28.52 percent higher than Anchorage costs, and the new rural II differential is 56.42 percent higher than Anchorage costs. The new rural II differential is higher than the current rural differential of 50.7 percent because one lower-priced area was taken out and because the expansion of the data base led to the addition of some higher cost areas.

Urban, Rural I, and Rural II Allotments

Anchorage TFP costs were $350.20 for a family of four in June 1985. Using the new urban differential of 1.0079 percent, the new urban allotment would be $352. This is lower than the current urban allotment of $372, reflecting the mathematical results of taking the higher-priced rural I areas out of the urban designation. However, the Department does not want to reduce allotments in urban areas, so the Department is freezing urban allotments of $372 for a four-person household at the existing level until such time as the annual cost-of-living adjustment, calculated on the basis of the $352 allotment, dictates that they be increased. The same approach will be taken with respect to the one area being reclassified from rural to rural I. The new rural I allotment is $450, approximately 28 percent higher than the new unfrozen urban allotment, reflecting higher food costs in rural I areas. It is 21 percent higher than the current urban allotment, and it is lower than the current rural allotment. The new rural II allotment is approximately 55 percent higher than the new unfrozen urban allotment and 4 percent higher than the current rural allotment, reflecting that these areas have the highest food costs of all.

The current TFP amounts and the revisions for Alaska are as follows:

Household size	Current		New			
	Urban	Rural	Urban (Frozen)	Rural I	Nenana (Frozen)	Rural II
1	111	158	111	135	158	164
2	204	290	204	247	290	301
3	293	415	293	354	415	431
4	372	527	372	450	527	547
5	442	626	442	534	626	650
6	530	752	530	641	752	780
7	586	831	586	708	831	862
8	670	949	670	810	949	985
+ Each additional	+84	+119	+84	+101	+119	+123

Implementation

This rule will have an important impact upon households in the State of Alaska. Many Alaskan households receiving food stamps will receive a different allotment amount. Households in many communities will be entitled to higher allotments because they have been reclassified either from urban to rural I or rural II or from rural to rural II. Households in one community, Nenana, will be reclassified from rural to rural I, but their allotments will be temporarily frozen at current levels. Households which remain urban will have their allotments frozen temporarily at current urban levels until cost of living adjustments provided for in the Food Stamp Act require a change.

After extensive discussions between the State of Alaska and the Alaska Legal Services Corporation, it was decided that an April 1, 1986, implementation was appropriate.

Enhanced Benefits and Recoupments

This rule is considered an improvement in the method of issuing benefits in Alaska and is based on new information, previously existing information, and other factors discussed in this docket. Most rural households will receive higher benefit levels, and urban households in areas remaining urban will eventually receive somewhat lower benefit levels than they would have if these rules had never been issued. If these rules had been issued two years ago, urban households remaining in urban areas would have received fewer benefits for two years. However, since their allotments were correctly computed under existing regulations, although based on a different geographic base and methodology (see 49 FR 18458–18463 and 50 FR 13759–13761), the Department decided that claims should not be issued against households living in areas still labelled urban to collect overissuances of benefits. The Department believes it is in the public interest to forgo recouping benefit amounts from urban households.

Likewise, rural households have been receiving the proper amount of benefits in accordance with a properly issued rule and retroactive benefits will not be paid to rural households whose benefits will increase, since no wrong denials of benefits occurred. However, should the State agency delay implementation beyond the April 1, 1986 period, retroactive benefits would be paid subsequently to affected households in rural areas.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food and Nutrition Service, Food stamps, Grant programs, Social programs, Records, Reporting requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food and Nutrition Service, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting requirements, Social Security, Students.

Therefore, Parts 272 and 273 are amended as follows:

1. The authority citations for Parts 272 and 273 continue to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g) (75) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(75) Amendment No. 273. The State agency shall implement this amendment establishing Alaska urban, Rural I, and Rural II allotment levels by April 1, 1986.

3. In § 272.7(c), the definition for "Urban Alaska TFP" is revised, the definition for "Rural Alaska TFP" is removed and new definitions for "Rural I Alaska TFP" and "Rural II Alaska TFP" are added in alphabetical order. The revisions and additions reads as follows:

§ 272.7 Procedures for program administration in Alaska.

(c) *Definitions* * * *

"Rural I Alaska TFP" refers to a Thrifty Food Plan (TFP) that is the higher of the TFP that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: In all places in Kodiak Island Borough with the exception of Kodiak; in all places in the Kenai Peninsula Borough that are west of Cook Inlet (including Tyonek, Kustatan, Kalgin Island, Iliamna, Chenik, and Augustine Island) and Chugach Island, English Bay, Port Graham, Portlock, Pt. Gore, Pye Island, and Seldovia. In the Yukon-Koyukuk Census Area, the city of Nenana; and Skwentna in the Matanuska-Susitna Borough. In the Valdez-Cordova Census Area, all places except Dayville and Valdez; and in the Southeast Fairbanks Census Area all places except Big Delta, Delta Junction, and Fort Greely. In the Skagway-Yakutat-Angoon Census Area, all places except Skagway; in Sitka Borough all places except Sitka; in the Wrangell-Petersburg Census Area, all places except Wrangell and Petersburg; in the Ketchikan Gateway Borough, all places except Ketchikan, Saxman, and Ward Cove; in the Prince of Wales-Outer Ketchikan Census Area, all places except Craig, Hyder, and Metlakatla.

"Rural II Alaska TFP" refers to a TFP that is 56.42 percent higher than the Anchorage TFP, a calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough; Kobuk Census Area; Nome Census Area; Yukon-Koyukuk Census Area except for the city of Nenana; Wade Hampton Census Area; Bethel Census Area; Denali in the Matanuska-Susitna Borough; Dillingham-Bristol Bay Borough; and in all places in the Aleutian Islands except for Cold Bay and Adak.

"Urban Alaska TFP" refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or 1.0079 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Cold Bay and Adak in the Aleutian Islands; Kodiak in Kodiak Island Borough; Valdez and Dayville in the Valdez-Cordova Census Area; all places in Kenai Peninsula Borough that are on the Kenai Peninsula except for those specifically designated as Rural I; the entire Anchorage Borough; the entire Matanuska-Susitna Borough except for Denali and Skwentna; the entire Fairbanks-North Star Borough; the entire Juneau Borough; the entire Haines Borough; Sitka in the Sitka Borough; Skagway in the Skagway-Yakutat-Angoon Census Area; Wrangell and Petersburg in the Wrangell-Petersburg Census Area; Ketchikan, Saxman, and Ward Cove in the Ketchikan-Gateway Borough; Craig, Hyder, and Metlakatla in the Prince of Wales-Outer Ketchikan Census Area; and Big Delta, Delta Junction, and Fort Greely in the Southeast-Fairbanks Census Area.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.10 paragraph (e)(4)(i) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculating net income and benefit levels. * * *

(4) Thrifty Food Plan (TFP)—(i) Level of the TFP. The TFP shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC, adjusted for the price of food in Honolulu. The plans for urban, rural I and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the costs of these plans may not exceed the cost of the highest TFP for the 50 States. The TFP amounts in each area are adjusted annually and will be prescribed in a General Notice published in the **Federal Register**.

* * * * *

Dated: April 28, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-9934 Filed 5-1-86; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 925

Grapes Grown in a Designated Area of Southeastern California and Imported Into the United States; Delay of Effective Dates of 1986 Season Requirements

Correction

In FR Doc. 86-8814 beginning on page 13208 in the issue of Friday, April 18, 1986, make the following correction:

On page 13209, third column, in § 925.304, in the tenth line, "and Riber" should read "Almeria, and Ribier".

BILLING CODE 1505-01-M

Commodity Credit Corporation

7 CFR Part 1435

Protection of Sugar Producers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the provisions which are designed to protect sugar producers as mandated by section 401(e)(2) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Under the rule, the Commodity Credit Corporation (CCC) will pay sugar producers the maximum benefits of the sugar price support program, less benefits previously received by the producers, in the event of the insolvency of the processor with whom they have entered into a contract for the processing of sugar beets or sugarcane.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Ross D. Ballard, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447-4704.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

Information collection requirements contained in this regulation (7 CFR §§ 1435.200-1435.206) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, and have been assigned OMB clearance number 0560-0093.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases 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.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

The Rule

Statutory Requirements

Section 401(e) of the Agricultural Act of 1949, as amended by section 903 of the Food Security Act of 1985 (7 U.S.C. 1421(e)), requires that whenever price support for an agricultural commodity is carried out through loans to processors, the Secretary shall obtain from the processors such assurances as the Secretary deems adequate that the producers of the agricultural commodity have received or will receive maximum benefits from the price support program. If the assurances are not adequate to cause the producers of sugar beets and sugarcane, because of the bankruptcy or other insolvency of the processor, to receive maximum benefits from the price support program, within 30 days from the final settlement date of the contract between producers and processors, the Secretary shall pay the producers, on demand, such maximum benefits less benefits previously received.

A proposed rule for implementing the provisions of section 401(e)(2) of the Agricultural Act of 1949, as amended, was published in the **Federal Register** on March 20, 1986 (51 FR 9760). Because some producers of 1984-crop sugar beets are eligible to apply for payment and are currently suffering some financial distress from their failure to receive the maximum benefits of the price support program, the comment period was limited to 21 days.

General Summary of Comments

The public was afforded until April 10, 1986 to comment on the proposed rule. The Department has considered all comments received in developing this final rule. The Department received a total of two sets of comments with respect to the proposed rule.

All comments received are on file and available for public inspection in Room 3627-South Building, 14th and Independence Avenue, SW., Washington, DC 20250.

The following is a summary of comments received and actions taken:

Comments on Major Program Provisions

1. Gramm-Rudman-Hollings Act

A. *Provisions of the Proposed Rule.* The preamble to the proposed rule provided notice that the payments which are made available to producers in accordance with the terms and conditions of this regulation are subject to reduction to the extent required by the Balanced Budget and Emergency Deficit Control Act of 1985, Title II of Pub. L. 99–177 (popularly known as the "Gramm-Rudman-Hollings Act") (the "Act").

B. *Comment.* One comment proposed amending section 1435.203 to include a statement that benefit payments to producers for 1984 crop sugar beets are exempt from reduction under the Act. The commenter argued that the Act did not apply to payments related to contracts between producers and processors entered into prior to the date of issuance of a sequestration order under section 252 of the Act. The commenter relied on the language of section 256(j)(2)(A) of the Act exempting from reduction "[p]ayments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under section 252," and asserted that "[w]hile the 1984 sugar beet contracts are technically contracts between the processor and the producer, when the processor participates in the price support loan program, the contracts constructively and legally become contracts between the producer and the Commodity Credit Corporation to the extent of the minimum government support price." The commenter also stated that the effect of the subrogation provisions of section 401(e)(2) of the Agricultural Act of 1949 is that the Secretary of Agriculture has purchased the claims of the producer against the processor, and therefore the Secretary of Agriculture is making a constructive payment under the 1984 sugar beet contracts.

C. *Discussion of Comments.* The suggestions made by the commenter have not been adopted. The exemption in section 256(j)(2)(A) applies only to payments and loan eligibility under a contract *"entered into with a person by the Commodity Credit Corporation"* (emphasis added). There was no contract between CCC and the producers prior to February 1, 1986, the date of issuance of the fiscal year 1986 sequestration order.

CCC had no obligation to make payment to producers prior to enactment of the Food Security Act of 1985. It is incorrect to characterize the contracts between the producer and the processor for the 1984 crop of sugar beets as contracts between CCC and the producer. CCC is not a party to those contracts, does not negotiate their terms and has no contractual rights or obligations under such contracts. Similarly, the fact that CCC is subrogated to the claims of the producer against the processor and others responsible for non-payment does not make payments which are made under the provisions of these regulations payments which can be considered to be made under a contract between the producer and processor. CCC's obligation to make payments is derived from the provisions of section 401(e)(2) of the Agricultural Act of 1949 and not from a contract between the producer and processor. Furthermore, it is inaccurate to say that as a result of the subrogation to CCC, CCC has "purchased" the claims of the producers. The payments by CCC precede the subrogation to CCC. As the same commenter recognizes elsewhere in his set of comments, under the principles of equity, CCC is subrogated to the producers' claims because CCC has made payments to the producers; CCC does not make payments to producers because it is subrogated to their claims.

CCC is required to reduce the payments that are to be made to producers under these regulations since the payments are not exempt from reduction under the Act. Had Congress intended to exempt the payments from the application of the Act, it could and presumably would have done so.

2. Subrogation of Claims

A. *Provisions of the Proposed Rule.* The proposed rule provided that a producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment.

B. *Comment.* Two comments were received with respect to subrogation of claims. One commenter supported the subrogation requirement as set forth in the proposed rule. The remaining commenter recommended that the subrogation requirement set forth in the proposed rule be clarified to show that the amount of the claim subrogated to CCC is limited to the amount of the benefit payment to which the subrogee is equitably entitled.

C. *Discussion of Comments.* The suggestions made by the second commenter have been adopted. This commenter argued that the intent of section 401(e)(2)(B) of the Agricultural Act of 1949, as amended, is that the subrogation to CCC be limited to the amount of the claims of the producer for such nonpayment against the processor and other persons responsible for such nonpayment corresponding to the amount of the benefit payment. This commenter argued that it is implicit in the equitable principle of subrogation that the assignment in aid of subrogation is limited to that to which the subrogee is equitably entitled. The intent should be clarified, according to this commenter, because producers eligible for benefit payments, as provided for in this rule, have claims against the processor and others for damages in excess of the benefit payment as defined in this rule.

The Department concurs with the respondent recommending clarification of the subrogation provisions of the proposed rule. It is not the intent of CCC to require producers to subrogate claims in excess of the benefit payments which they are eligible to receive. Therefore, the final rule provides that a producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment up to the amount of the benefit payment to that producer, plus any applicable interest or other charges.

3. Other Program Issues

A. *Sugar beets of average quality.* One commenter suggested that CCC clarify the definition of "benefit payment(s)" in § 1435.201 of the regulations to make it explicit that the price support level used in computing the benefit payment for sugar beets is based on sugar beets of average quality as defined in the applicable price support regulations. This suggestion has not been adopted. Such a clarification is unnecessary. The definition of "benefit payment(s)" already provides that a benefit payment is based in part on "the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments." One of the adjustments that may be applicable is if the sugar beets or sugarcane are of non-average quality. For the 1983 through 1985 crops, sugar beets of average quality are defined as sugar beets containing 15.59 percent sucrose (7 CFR 1435.112(j)).

B. *Number of requests for payment.* One comment was received with respect to claims by a producer. The commenter recommended that, in the interest of admininstrative efficiency, a producer be required to make only one claim to receive benefits for a particular crop year and processor. This suggestion has not been adopted. A producer will be required to file one request for payment

with supporting documentation as deemed necessary by CCC for each contract with a processor. Requests for payment on a contract by contract basis are more efficient since each contract constitutes a separate accounting unit.

C. *Lien Waiver.* One comment was received with respect to lien waivers. The commenter proposed that a producer be required to obtain and present evidence of a waiver of all rights from any party claiming a lien in the sugar beets or any party claiming title to the sugar beets. This suggestion has not been adopted. The rule provides that, if there are any existing liens or encumbrances, CCC will make all benefit payments jointly to the producer and lienholder unless the producer provides CCC with waiver of such liens.

If there are existing liens and CCC does not receive a lien waiver, the check will be issued jointly to the producer and lien or encumbrance holder. Section 401(e)(2) of the 1949 Act does not authorize CCC to deny payment to producers absent a lien waiver.

D. *Loan Program.* Two other comments were received regarding the provisions of the sugar price support loan program. These comments have not been considered in promulgating this rule since this rule does not affect the regulations for the sugar price support program.

List of Subjects in 7 CFR Part 1435

Agriculture, Loan programs, Payments, Price support programs, Sugar.

Final Rule

PART 1435—[AMENDED]

Accordingly, 7 CFR Part 1435 is amended by adding a new subpart entitled "Subpart—Regulations Governing the Protection of Sugar Producers" to read as follows:

Subpart—Regulations Governing the Protection of Sugar Producers

Sec.

Authority: Sec. 401(e)(2), Agricultural Act of 1949 (7 U.S.C. 1421(e)(2)); 5 U.S.C. 301.

Subpart—Regulations Governing the Protection of Sugar Producers

§ 1435.200 General statement.

If the bankruptcy or other insolvency of a processor has caused producers of sugar beets or sugarcane not to receive maximum benefits from the price support program for sugar beets or sugarcane within 30 days after the final settlement date provided for in the contract between such producers and processor, CCC, on demand of the producers and on such assurances as to nonpayment as CCC may require, shall pay such producers benefit payments.

§ 1435.201 Definitions.

The following definitions apply to terms used in this subpart:

"ASCS" means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

"Benefit payment(s)" means an amount to be paid to eligible producers equal to the difference between the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments, and any benefits previously received by the producers with respect to such crop of sugar beets and sugarcane.

"CCC" means the Commodity Credit Corporation, United States Department of Agriculture.

§ 1435.202 Producer eligibility.

(a) A producer of sugar beets or sugarcane shall be considered to be eligible for benefit payments only: (1) For that quantity of domestically-produced sugar beets or sugarcane sold under contract to a processor who was a participant in the price support program for sugarcane or sugar beets for the applicable crop; (2) if the contract with the processor provided for a final settlement date after January 1, 1985; (3) if the processor failed to make payment within 30 days after the final settlement date due to bankruptcy or other insolvency; and (4) if the producer was an eligible producer for purposes of the price support program for the applicable crop of sugar beets or sugarcane.

(b) CCC may require as a condition of payment such documentation or other proof of the producer's eligibility, the processor's nonpayment, or other element of the benefit payment as CCC determines appropriate.

§ 1435.203 Benefit payment to producers.

(a) *Where to request benefit payments.* A producer must request a benefit payment from CCC at the producer's local county ASCS office, unless otherwise determined by CCC, in a manner and on a form prescribed by CCC.

(b) *When to request benefit payments.* A producer must request a benefit payment no earlier than 30 days, and no later than 60 days, after the final settlement date provided for in the contract between the producer and the processor, unless otherwise approved by CCC. In the case of eligible producers of 1984-crop sugar beets, the final date for producers to demand a benefit payment shall be 30 days following the effective date of this regulation, unless otherwise approved by CCC.

(c) *Method of payment.* Benefit payments will be made by checks drawn on CCC, by credit to the producer's account, or by such other means as CCC determines appropriate.

§ 1435.204 Liens.

(a) In order to receive a benefit payment, a producer must certify to CCC whether there were any liens or encumbrances on the sugar beets or sugarcane that the producer sold to the applicable processor under the applicable contract as of the time of delivery of the sugar beets or sugarcane to the processor, or as of the time title to the sugar beets or sugarcane transferred from the producer to the processor if title transferred at a time other than at the time of delivery to the processor. If there were any such liens or encumbrances, the producer must provide CCC with a certified list of all such liens or encumbrances together with the names and addresses of the holders of such liens or encumbrances and the amount held by each such holder.

(b) CCC will make all benefit payments jointly to the producer and the holders of such liens or encumbrances unless the producer provides CCC with a waiver of all such liens or encumbrances by each such holder or a certified statement by such holder that the liens or encumbrances have been extinguished. CCC may prescribe the form for such waivers or statements.

§ 1435.205 Subrogation of claims.

(a) A producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment. The amount subrogated to CCC must be equal to the amount of the producer's claims, up to the amount of the benefit payment plus any applicable interest or other charges. Any recoveries up to the amount subrogated which are received by that producer from any source whatsoever for the processor's nonpayment must be immediately forwarded to CCC. The producer shall cooperate with CCC in CCC's efforts to collect on the claims subrogated to CCC.

(b) A producer shall maintain the books and records pertaining to the benefit payments and the applicable contracts with the processor for a period of at least 3 years following the producer's demand for payment under this subpart. Authorized officials of the United States Department of Agriculture shall have access to, and right to examine, any pertinent books, documents, papers, and records of the producer.

§1435.206 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1435.200 through 1435.206) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0095.

Signed at Washington, DC on April 29, 1986.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 86–9901 Filed 4–29–86; 1:43 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Virgin Atlantic Airways, Ltd.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Virgin Atlantic Airways, Ltd. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Virgin Atlantic Airways, Ltd. on April 21, 1986, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Virgin Atlantic Airways, Ltd.

* * * * *

Dated: April 25, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86–9839 Filed 5–1–86; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[Docket No. 86–423]

Federal Savings and Loan System; Interstate Branching Within the District of Columbia, Maryland, and Virginia Region

Dated April 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its policy statement on branching to allow federal associations whose home offices are located in the District of Columbia ("D.C.") to establish branch office in either Virginia or Maryland (but not both), subject to certain restrictions. The Board is also amending that policy statement to allow federal associations whose home offices are in Maryland or Virginia to establish branches in the District of Columbia.

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION PLEASE CONTACT: Gregory B. Smith, Deputy Director for FSLIC Corporate, Corporate and Securities Division, Office of General Counsel, (202) 377–6454; or Donald J. Bisenius Research Economist, Office of Policy and Economic Research, (202) 377–6766.

SUPPLEMENTARY INFORMATION: By Resolution No. 85–1024, dated November 15, 1985 (50 FR 49937, Dec. 6, 1985)), the Board proposed revisions to its policy statement concerning branching by federally chartered savings and loan associations and federal savings banks. In that proposal, the Board requested comments on a revision to its branching policy statement in § 556.5 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 556.5) that would allow, as an exception to its general policy limiting interstate branching, federal associations with a home office in the District of Columbia to establish branches in either Virginia or Maryland, but not both, and allow federal associations with a home office in Viriginia or Maryland to establish branches in the District of Columbia. After considering the public comments, the Board has determined to adopt the amendments noted hereinafter, substantially as proposed, with some technical revisions made for clarification and some limited substantive changes.

Summary and Discussion of Comments Received on Proposal

The Board received public comments from fourteen organizations in response to its proposal. Nine comments were from savings and loan associations (6 federal associations based in D.C., Maryland or Virginia; 2 state-chartered associations based in Maryland; and 1 state-chartered association based outside Maryland, Virginia, and D.C.). Two comments were received from savings and loan trade associations, two comments were received from commercial bank trade associations and one comment was from a consumer

housing trade association. Eleven commenters generally endorsed the proposal, and all generally suggested some changes. Only three commenters objected to the proposal as a whole.

Five of the commenters that supported the proposal suggested that the proposal should be broadened to allow federal associations based in the District of Columbia to branch into both Maryland and Virginia and to allow branching in Maryland by Virginia-based federal associations and branching in Virginia by Maryland-based federal associations. After considering this comment, the Board believes that the proposal should not be broadened in the manner suggested by those commenters since it would not be consistent with the rationale and purpose of the proposed changes—to establish a degree of parity for the District of Columbia and federal associations based in the District of Columbia in recognition of the extremely small geographic size of the District of Columbia and its relationship with Maryland and Virginia.

Two of the commenters supporting the proposal suggested that the Board delete or expand the 120 days period within which federal associations in the District of Columbia may elect Virginia or Maryland for future branching outside the District of Columbia. Upon further consideration the Board has decided to expand that period to 180 days so that the associations would have more time to give due consideration to their options. Once this choice has been made and the Board has approved a branch in the chosen state, however, the choice may not be changed, *e.g.*, by closing or selling branches in the orginally-chosen state and opening new branches in the other state.

Two other commenters claimed that the proposal would put commercial banks at a competitive disadvantage. In that regard the Board notes that recent legislative enactments by the District of Columbia establish interstate banking rights in the District of Columbia without giving similar rights to state-chartered savings and loan associations.

Failure to serve the credit needs of local communities pursuant to the Community Reinvestment Act was raised as a potential problem by two commenters. They contended that the Board's proposal would inevitably result in a draining of deposits from the District of Columbia to the detriment of the credit needs of residents of the District of Columbia. The Board has considered this concern, but has concluded that the proposal should not have that effect. Federally chartered associations have had the authority to make loans outside of their immediate market area for many years, but, nevertheless, have consistently served the credit needs of their local communities.

Two other commenters also objected to the provision that denies branching rights in Virginia or Maryland to a D.C.-based federal association that has acquired rights to establish branches in the other state on a non-supervisory basis, for example, by making a supervisory acquisition in the state. Those two commenters generally objected on the grounds that the provision was unfair to those institutions since they recently acquired branching rights in Virginia by acquiring Federal Savings and Loan Insurance Corporation ("FSLIC")-insured supervisory case institutions in that state. Both of those transactions took place within 12 months prior to when this amendment was proposed by the Board and issued for comment in December of 1985. Those two transactions were the only such transactions involving the District of Columbia and Virginia or Maryland approved by the Board in 1985. The Board does not believe that the institutions in question have been treated unfairly under the proposal, but believes that certain equitable considerations may warrant different treatment under the rule for these two transactions, which were undertaken at a time when the proposal was in various stages of consideration and development by the Board. In addition, the Board notes that one of those institutions also acquired an FSLIC-insured supervisory case institution in the District of Columbia but elected to establish its home office in Virginia as part of that transaction. For purposes of this amendment, however, the Board will consider its home office as being in the District of Columbia for branching purposes. The treatment of these transactions as not precluding branching into the other state is specifically limited to these cases and it may not be construed as precedent to support any claim by any other entity seeking relief from one of the Board's regulatory requirements or limitations.

Background

Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464 (1982 & Supp. II 1984)) grants the Board plenary authority to regulate the operations of federal associations. Pursuant to this authority, the Board has always had the ability to permit and to regulate branching of federal associations on both an intrastate and interstate basis. *See IBAA* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C., 1982). However, with the passage of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469, a federal association that fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1954 or to meet the asset composition test imposed by subparagraph (c) of that section is precluded from operating branch offices outside the state in which the association has its home office. 12 U.S.C. 1464(r) (1982).

The Board has permitted federally chartered associations to branch since 1937, 2 FR 825 (May 14, 1937), although its first policy statement on branching was not adopted until 1967, 32 FR 20630 (Dec. 21, 1967). In 1972, the Board amended the policy to emphasize its preference for intrastate operations by stating that the Board generally would not approve applications for branches outside of the home state of the association, 37 FR 3987 (Feb. 25, 1972). Associations that had acquired out-of-state branches before that 1972 amendment generally were grandfathered and allowed to keep those branches. The Board made it clear, however, that it had the discretionary authority to approve the branching of federal associations irrespective of the location of the branch.

The Board has modified its general policy of preference for intrastate branches, however, because of the economic and financial difficulties facing the thrift industry. In order to limit its exposure in dealing with the most severely crippled thrifts, the FSLIC has used interstate supervisory mergers or acquisitions where no suitable in-state acquiror could be found. In response to these changes and in order to codify its procedures, the Board amended its policy statement on branching to specifically authorize interstate operations by federal institutions resulting from supervisory mergers or acquisitions. *See* Board Resolutions Nos. 82–498, 47 FR 34125 (Aug. 6, 1982); 81–157, 46 FR 19221 (March 30, 1981); and 81–496, 46 FR 45120 (Sept. 10, 1981). These amendments enabled the FSLIC to draw from a wider range of potential merger partners in supervisory situations if a suitable in-state partner could not be found.

The Board has also issued a proposal, Board Resolution No. 85–1198 (51 FR 33 (Dec. 20, 1985)), to amend that policy statement to further expand that supervisory exception and to allow interstate branching by federal

associations located anywhere in the country on a nonsupervisory basis if the laws of the target state and of the state in which the federal's home office is located ("home state") would allow such branching by associations chartered under the laws of that home state. The present amendment differs from that proposal in that the branching rights granted herein are not dependent upon the existence of similar rights under state law for state-chartered associations.

Purpose of the Final Rule

The amendment to the policy statement now being promulgated recognizes that the basis for and result of treatment of Washington, D.C. as a "state" for branching purposes under § 556.5 may well be inconsistent with the basis for limiting branching by state boundaries in the case of the states. In no other area of the country does the Board restrict the branching activities of a group of institutions to a single city. Since Washington, D.C. falls in no state, federal associations located in Washington, D.C. will be allowed to elect one of the two contiguous states in which to establish branches.

The Board is cognizant of the District of Columbia's unique situation. Although it is currently treated like a state for purposes of branching, it differs from any state in comprising only a 61-square-mile wholly urban area surrounded by two contiguous states. Federal associations with home offices in the District of Columbia are effectively precluded from expanding into major parts of the metropolitan area, but federal associations in Maryland and Virginia can branch throughout their respective states.

Now that the deregulation of deposit rates is complete, the actual and potential adverse financial effects of such an extreme demographic constraint upon District of Columbia-based federal associations is a matter of concern. While the economy of the District of Columbia is relatively strong, its suburbs are experiencing major income, employment, and population growth. Federal associations with home offices in the District of Columbia must rely upon a very mature, highly competitive, and geographically compact area, with a decreasing population, for their retail savings growth. District of Columbia-based federal associations need such growth in order to offset low-yielding portfolios of mortgages accumulated prior to the deregulation of mortgage and deposit rates.

The Board is also proposing to grant federal associations located in Maryland or Virginia reciprocal rights to establish and maintain branch offices in the District of Columbia. The number of associations doing business in the District of Columbia has decreased over the last ten years. The resulting increase in competition for deposits and loans should benefit the residents of the District of Columbia.

The Final rule

This amendment pertains only to institutions with a federal charter. The Board is amending the Board's branching policy statement in 12 CFR 556.5 to allow federally chartered institutions (federal savings and loan associations and federal savings banks) whose home offices are in the District of Columbia to establish and maintain branches in non-supervisory transactions in either Maryland or Virginia (but not both). The amended policy statement specifies a procedure for a federal association headquartered in the District of Columbia to notify its Supervisory Agent of which of the two states it selects for branching. Once branches were established pursuant to such choice, however, the choice could not be reversed, *e.g.*, by closing branches in the originally chosen state and opening branches in the other state. Federal associations whose home offices are in Maryland or Virginia would also be allowed to branch into the District of Columbia in non-supervisory transactions.

District of Columbia-based federal associations with full branching rights in either Maryland or Virginia previously acquired pursuant to another provision of the Board's branching policy statement, § 556.5, *e.g.*, a supervisory acquisition, would not be permitted to branch into the other state pursuant to the branching permitted by the amendment unless those previously acquired branching rights were acquired as part of a supervisory transaction approved by the Board during 1985. However, under the amendment, District of Columbia-based associations not having full branching rights in Maryland or Virginia but having grandfathered branches in such state acquired prior to the effective date (February 25, 1972) of the Board's general policy, § 556.5(a)(3)(i), prohibiting interstate branching, could retain those grandfathered branches and still choose to establish and maintain branches in the state (either Maryland or Virginia) in which it did not have the grandfathered branches or it could choose to pick the state in which its grandfathered branches are located for full branching rights. The amendment would not affect any full branching rights in Virginia and Maryland existing prior to the effective date of this final rule that a District of Columbia-based federal association had acquired under another provision of the Board's branching policy statement.

The interstate branching rights granted under this amendment could not, however, be acquired by an institution not having a home office in Maryland, Virginia or the District of Columbia. Therefore, for example, a Florida-based federal association having full branching rights in Virginia that were acquired in a supervisory transaction under § 556.4(a)(3) (ii) and (iv) would not be entitled to establish and maintain branches in the District of Columbia under the proposed rule. Moreover, that association could not acquire District of Columbia branching rights under the amended rule by changing its home office to Virginia. Nor, for example, could a Pennsylvania-based federal association acquire full branching rights in the District of Columbia by acquiring, through a supervisory merger, a Virginia-based association that had established branches in the District of Columbia pursuant to the amended rule. The Pennsylvania-based association could retain, as grandfathered branches, the existing District of Columbia branches it acquired as part of that merger but it could not establish additional branches in the District of Columbia. Moreover, it could not acquire branching rights in the District of Columbia by changing its home office to Virginia or the District of Columbia.

The Board has made a determination that this amendment would reduce the anomalous treatment of institutions based in the District of Columbia. The amendment also would serve the convenience and needs of consumers in the District of Columbia, Virginia and Maryland, without harming existing institutions in those jurisdictions, by increasing competition in those areas and at the same time reducing the risk to the FSLIC, and by promoting the continued existence of institutions serving the consumers in the District of Columbia by enhancing the financial viability of those institutions.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements are discussed above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* There are no alternative approaches that would achieve the Board's goals of the rule which would have less impact on affected entities, including small institutions. The rule will have neither a disproportionate nor adverse impact on small institutions. The Board rejected the alternatives discussed above in **SUPPLEMENTARY INFORMATION** for the reasons given therein.

List of Subjects in 12 CFR Part 556

Savings and loan associations.

Accordingly, the Board hereby amends Part 556, Subchapter C, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 556—STATEMENTS OF POLICY

1. The authority citation for Part 556 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464); Sec. 341, 96 Stat. 1505, as amended, (12 U.S.C. 1701j–3); Secs. 402–403, 406–407, 48 Stat. 1256–1257, 1259–1260, as amended (12 U.S.C. 1725–1726, 1729–1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., P. 1071.

2. Amend § 556.5 by adding new paragraphs (a)(3) (v) and (vi) to read, as follows:

§ 556.5 Establishment of branch offices.

(a) *General.* * * *

(3) * * *

(v) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Board may approve the establishment of branches in either Maryland of Virginia, but not both, by an association whose home office is located in the District of Columbia; *Provided*, that if the association may establish branches on a nonsupervisory basis in Maryland or Virginia (excluding and grandfathered branches) under any other paragraph of this section other than (a)(3)(ii), unless those branching rights were acquired under paragraph (a)(3)(iv) as a result of a supervisory transaction approved by the Board in 1985, such association may not branch into the other state solely pursuant to this paragraph, (a)(3)(v); and *Provided further*, that the association has informed the Supervisory Agent in writing of its chosen state for future branching within 180 days after [effective date of final regulation] or at the time of obtaining its Federal charter, which choice may not be changed by the association after it has made its election to branch in that state; and *Provided further*, that the Board generally will not approve a branch under this paragraph, (a)(3)(v), if the association's eligibility for approval of the branch under this paragraph would result from a change in the location of the association's home office.

(vi) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Board may approve the establishment of branches in the District of Columbia by an association whose home office in located in Maryland or Virginia: *Provided*, that the Board generally will not approve a branch under this paragraph, (a)(3)(vi), if the branch's eligibility for approval under this paragraph would result from a change in the location of the association's home office.

* * * * *

§§ 556.5 and 556.9 [Amended]

3. Amend § 556.5 and 556.9 by removing the authority citations located at the end of the sections.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–9913 Filed 5–1–86; 8:45 am]

BILLING CODE 6720–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation; Organization

AGENCY: Farm Credit Administration.

ACTION: Final Rule with Request for Comments; Final Rule Comment Period Extension.

SUMMARY: The Farm Credit Administration ("FCA") has amended 12 CFR 611.1142(c) relating to meetings of the board of directors of the Farm Credit System Capital Corporation ("Corporation") established under the Farm Credit Amendments Act of 1985 ("1985 Amendments") pursuant to section 4.28A of the Farm Credit Act of 1971, as amended ("Act"). The FCA has also extended the period for public comment on final regulations relating to the Corporation set forth in 12 CFR Part 611, Subpart J (published March 13, 1986; 51 FR 8665–8671).

DATES: Effective April 14, 1986. Written comments must be received on or before May 30, 1986.

ADDRESSES: Submit comments in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION: On February 24, 1986, the FCA chartered the Corporation pursuant to section 4.28A of the Act (51 FR 7121), and on March 10, 1986, the FCA adopted final regulations relating to the Corporation, including the board of directors, corporate powers, financial assistance, and capitalization (51 FR 8665–8671). Since that time, the FCA concluded that the principal offices of the Corporation should be located in the greater metropolitan area of Kansas City, and that the meetings of the board of directors of the Corporation should be conducted from such offices, except where the board pursuant to the Articles of Incorporation specifically resolves to hold a meeting outside that area. The Articles of Incorporation of the Corporation have been so amended. (Published elsewhere in today's **Federal Register**.)

In order to implement that amendment the FCA has also amended paragraph (c) of 12 CFR 61.1142 to delete reference in that paragraph to the situs of meetings of the board of directors of the Corporation. The deletion was made because the FCA believes that recent amendments of the Articles of Incorporation adequately address the location of meetings of the board of directors and that reference in the regulation is unnecessary.

In adopting the regulation as a final regulation, the FCA determined that the amendment was necessary to make the regulations consistent with recent amendments to the Articles of Incorporation of the Corporation and to enable the board to conduct meetings unrestricted by the regulation. For this reason, the FCA concluded that public notice and publication for comment are impracticable, unnecessary and contrary to the public interest. For the same reason, the FCA has waived the 30-day period otherwise applicable under paragraph (b)(1) of section 5.17 of the 1971 Act. In accordance with section 5.17(b)(2) of the 1971 Act, the FCA declared the amendment effective April 14, 1986. Although the amendment is effective, the FCA has provided the

public a period ending May 30, 1986 to submit written comments to the FCA.

In addition, since the publication of the final regulations relating to the Corporation on March 13, 1986 (51 FR 8665–8671), the FCA has received several comments requesting additional time to respond to the regulations. The FCA has determined that an extended comment period would be beneficial in ensuring that all interested parties have an opportunity to comment on the final regulations. Accordingly, the FCA has extended the period for public comment on regulations related to the Corporation set forth in 12 CFR Part 611, Subpart J for an additional period ending May 30, 1986.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government Agencies), Rural areas.

As stated in the preamble, Part 611, Subpart J of Title 12 of the Code of Federal Regulations is being amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611, Subpart J continues to read as follows:

Authority: Secs. 4.28A–4.28L, 5.17, Pub. L. 99–205, 99 Stat. 1678.

2. Paragraph (c) of § 611.1142 is revised to read as follows:

§ 611.1142 General corporate powers.

* * * * *

(c) *Operations.* The Corporation shall be operated on sound business basis, and its directors, officers, employees, and agents shall be subject to the standards of conduct provisions set forth in 12 CFR Part 612, Subpart B. In addition, in order to ensure that transactions between the Corporation and System institutions are conducted impartially and on a sound business basis, no director, officer, employee, or agent of any System institution or System service organization may be affiliated with or employed by the Corporation in a joint capacity, except as an elected director of the Corporation where otherwise eligible. Any joint officer or employee of any System institution and the Predecessor Corporation must resign from the System institution to remain an employee of the Corporation.

* * * * *

Kenneth J. Auberger,

Acting Chairman.

[FR Doc. 86–9911 Filed 5–1–86; 8:45 am]

BILLING CODE 6705–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

General Policy on Sharing Confidential Supervisory Information With State Banking and Thrift Regulatory Agencies; Interpretive Ruling and Policy Statement Number 86–1

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 86–1.

SUMMARY: The NCUA Board has adopted as its statement of general policy for federally insured state-chartered credit unions the Federal Financial Institutions Examination Council (FFIEC) policy entitled "General Policy on Sharing Confidential Supervisory Information with State Banking and Thrift Regulatory Agencies".

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy P. Hornbrook, Office of Examination and Insurance or Steven R. Bisker, Assistant General Counsel, NCUA 1776 G Street, NW., Washington, DC 20456, or telephone (202) 357–1065 (Mr. Hornbrook) or (202) 357–1030 (Mr. Bisker).

SUPPLEMENTARY INFORMATION: On March 14, 1986, the FFIEC approved a recommendation to each of the participating federal financial institution regulatory agencies to adopt its policy entitled "General Policy on Sharing Confidential Supervisory Information with State Banking and Thrift Regulatory Agencies". The NCUA Board, on April 21, 1986, adopted the General Policy with respect to confidential supervisory information obtained by NCUA. The General Policy states what is already the practice by the NCUA with regard to sharing supervisory information about credit unions with state supervisory authorities. The General Policy adopted by the NCUA Board is as follows:

Interpretive Ruling and Policy Statement Number 86–1

General Policy for Sharing Confidential Supervisory Information With State Credit Union Regulatory Agencies

In view of the increasing interstate activities of U.S. financial institutions and the growing need for federal and state agencies to cooperate in their supervisory efforts, NCUA has adopted this General Policy to share with the states certain confidential supervisory information. This policy recognizes that good communications among the various federal and state authorities are in the best interest of all and are vital for an effective and efficient supervisory system. Accordingly, NCUA shall attempt to accommodate any appropriate informational needs of state supervisory authorities regarding the condition of federally chartered and state-chartered institutions in a full and complete fashion. The general conditions under which confidential information on these institutions would be shared are described below:

1. The requesting state agency should have supervisory jurisdiction over an organization related to the institution for which information is requested or have authority over an application that has been submitted by that institution.

2. The requesting state agency must agree to use the information only for appropriate supervisory purposes and be legally able to protect the confidentiality of the information.

Specific requests from state supervisory authorities should be submitted directly to NCUA. NCUA encourages state authorities to enter into this sharing arrangement and that they will also agree to share their information with NCUA.

Dated this 21st day of April 1986.

By: National Credit Union Administration Board.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–9896 Filed 5–1–86; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 51207–5207]

General Requirements for Financial Assistance; Unfair Competition Prohibitions

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's regulations concerning general requirements for financial assistance at 13 CFR § 309.2 entitled "Unfair Competition". The rule implements section 702 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.* (PWEDA) which provides that:

No financial assistance under this Act shall be extended to any project when the result would be to increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises.

42 U.S.C. 3212

EDA's regulations at 13 CFR 309.2 provide that under certain circumstances, EDA must conduct a study (verification and evaluation) of the capacity and demand for particular goods, materials, commodities, services or facilities, based upon specified information submitted by the applicant for financial assistance under PWEDA. EDA's verification and analysis is referred to as a "702 Study". These amendments revise the conditions under which EDA must conduct a "702 Study".

DATES: Effective Date: May 2, 1986. Comments by: July 1, 1986.

ADDRESS: Send comments to James F. Marten, Deputy Chief Counsel for Operations and Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7009, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Walter Archibald, Director, Office of Compliance Review, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7329, Washington, DC 20230, (202) 377–2710.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR Part 309 entitled General Requirements For Financial Assistance. Section 309.2 concerning unfair competition is being revised by raising the threshold amount of EDA funds in paragraphs (a) and (d) from $10,000 to $25,000. This reflects cost changes since the existing paragraphs were adopted over 10 years ago. The removal of portions of paragraphs (e)(1), (e)(2)(ii) and all of paragraph (e)(2)(v) revises the description of projects not requiring a "702 Study."

The amendment at 309.2(a) narrows the part of the definition of "financial assistance" concerning contracts, purchase orders, task orders or work orders to cover only those in an amount in excess of $25,000.

The amendment at § 309.2(d) narrows the definition of technical assistance grants, contracts, or task orders to amounts in excess of $25,000.

The amendment at § 309.2(e)(1) broadens the definition of projects not requiring a "702 Study" to include non-public works projects, and defines firms deemed "primary beneficiaries."

The amendment at § 309.2(e)(2)(ii) narrows the definition of retention of capacity and employment by deleting the word "existing."

The amendment at § 309.2(e)(2)(v) broadens the prohibition against unfair competition by deleting the exception for direct or guaranteed working capital loans.

The addition of § 309.2(e)(3) narrows the unfair competition requirements by adding the exceptions of certain research, planning, and technical assistance grants.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

However, because the Department is interested in receiving comments from those who will benefit from this amendment, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the **"ADDRESS"** Section above.

Comments received by July 1, 1986 will be considered in promulgating a final rule.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

Accordingly, for the reasons set forth above, 13 CFR Part 309 is amended as follows:

PART 309—[AMENDED]

1. The authority citation for Part 309 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1–105, DOC Organization Order 10–4, as amended (40 FR 56702, as amended).

3. In 309.2, in paragraph (a), the definition for "Financial Assistance" is revised, paragraphs (d), (e)(1), (e)(2)(ii) are revised, Paragraph (e)(2)(v) is removed, and new Paragraph (e)(3) is added to read as follows. Paragraph (e) introductory text is shown for the convenience of the user.

§ 309.2 Unfair competition.

* * * * *

(a) Definitions. As used in this section:

* * * * *

"Financial Assistance" means any grant, loan, guarantee, or purchase of evidence of indebtedness by EDA pursuant to the authority of the Act, and any contract, purchase order, task order or work order in an amount in excess of $25,000 which is directed toward an increase in the productive capacity for goods or services by a specific enterprise either existing or prospective.

* * * * *

(d) Technical assistance. Whenever a Technical Assistance grant, contract, or task order in excess of $25,000 is requested for a project which is directed toward an increase in the productive capacity for goods or services by a specific enterprise, either existing or prospective, a "702 Study" will be required. The procedures for preparing such "702 Study" set forth in paragraph (c) of this section shall be followed to the extent necessary to provide the Agency with sufficient information.

(e) Projects not requiring a "702 Study". Financial assistance under the

Act may be provided to a project without a "702 Study" where EDA determines such project meets one of the following criteria:

(1) The project to be assisted is not designed primarily or essentially to benefit a particular firm or industry, but is designed primarily for the benefit of the community or area as a whole or for general industrial or commercial purposes. When a single firm or industry will utilize 50 percent or more of an EDA financed facility, that firm or industry is considered a "primary beneficiary".

(2) * * *

(ii) assure the retention of capacity and employment, or

* * * * *

(e) * * *

(3) That the grant is of one of the following categories which have been found not to result in an increase in the productive capacity for goods or services by a specific enterprise, either existing or potential.

(i) Research or study grants designed to: determine the causes of national, regional, or sectoral unemployment, underemployment, underdevelopment or chronic depression, assist in the formulation of programs to address such problems, or provide the personnel needed to conduct such programs;

(ii) Planning grants issued to State or local governments or to regional or area organizations for administrative expenses of a planning process or for the preparation of economic development plans or programs;

(iii) Technical Assistance grants which are not designed to assist a specific firm or group of firms and/or which will not lead directly to capacity development or expansion in the production of goods or services to be offered for sale in competition with existing producers not benefiting from the grant.

* * * * *

Dated: April 28, 1986.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 86-9880 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-09-AD; Amdt. 39-5295]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) AD 85-21-07, applicable to Beech Models 1900 and 1900C airplanes and codifies the corresponding priority letter AD dated October 22, 1985, into the **Federal Register**. The AD requires that in-service airplanes be operated in accordance with revised Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) material which reflects the performance achieved by production airplanes.

DATES: Effective May 6, 1986, to all persons except those to whom it has already been made effective by priority letter AD from the FAA dated October 22, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: Beech Letter 52-85-1948 dated October 21, 1985, applicable to this AD, may be obtained upon request to Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, Post Office Box 85, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Maple, Wichita Aircraft Certification Office, ACE-160W, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: The one-engine-inoperative takeoff gradient of climb data contained in the Beech Model 1900/1900C airplane POH/AFM are limitations based on the measured performance of a certification prototype Model 1900 airplane. Additional one-engine-inoperative takeoff climb data, presented by Beech as unapproved data in the POH/AFM, also reflect the performance achieved by this prototype airplane. It has been determined that the one-engine-inoperative gradient of climb performance of production Model 1900/1900C airplanes is measurably less than that calculated by reference to the POH/AFM. When production Model 1900/1900C airplanes are operated at a maximum takeoff weight calculated by reference to the POH/AFM for existing conditions of temperature and field elevation, they may not achieve the 2% one-engine-inoperative takeoff gross gradient of climb required by FAR 135, App. A, paragraph 6(b)(2). They therefore may not achieve the level of safety intended by that regulation. The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority letter dated October 22, 1985. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 85-21-07. Since the unsafe condition described therein may still exist on other Beech Model 1900 and 1900C airplanes, the AD is being published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Beech: Applies to Models 1900 and 1900C (all serial numbers) airplanes certificated in any category.

Compliance: Required within 10 hours time-in-service after receipt of this AD, unless already accomplished.

To ensure that required performance can be achieved for each approved combination of take-off configuration, weight, altitude and temperature, accomplish the following:

(a) Revise Beech Model 1900/1900C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM), P/N 114–590021–3, in accordance with Model 1900 and 1900C Interim Addendum to POH/AFM, P/N 114–590021–3, dated October 21, 1985.

Note.—The above cited interim addendum was transmitted to Model 1900/1900C operators of record by Beech Letter 52–85–1948, dated October 21, 1985.

(b) Conduct further operations in accordance with the POH/AFM so revised.

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

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946–4400. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, Post Office Box 85, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective May 6, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter from the FAA, dated October 22, 1985, and is identified as AD 85–21–07.

Issued in Kansas City, Missouri, on April 21, 1986

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–9828 Filed 5–1–86; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Parts 71 and 75

[Airspace Docket No. 85–AWA–43]

Establishment of Jet Route J–190 and VOR Federal Airway V–576, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish new Jet Route J–190 and Federal Airway V–576, located in northern New York state, due to the increase in traffic in the Hancock, NY, area. These new routes improve traffic flow and reduce congestion in the Bradley, CT, area. This action permits greater flexibility for maneuvering traffic in the Boston Air Route Traffic Control Center area and reduce controller workload.

EFFECTIVE DATE: 0901 U.t.c., July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On November 14, 1985, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to establish new Jet Route J–190 and new VOR Federal Airway V–576 located in the vicinity of Hancock, NY (50 FR 47062). Due to the increase in traffic on J–49, new Jet Route J–190 would parallel J–49 to eliminate opposite direction traffic for aircraft inbound to Bradley, CT, airport. This action alleviates congestion and compression of traffic in the Bradley terminal area and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations establish new Jet Route J–190 and new VOR Federal Airway V–576 located in the vicinity of Hancock, NY. This action alleviates congestion and compression of traffic in the Bradley, CT, terminal area and reduces controller workload.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, Jet routes and VOR Federal airways.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—[AMENDED]

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

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

2. Section 71.123 is amended as follows:

V–576—[New]

From Philipsburg, PA, via Williamsport, PA; Hancock, NY; to DeLancey, NY.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

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

4. Section 75.100 is amended as follows:

J–190—[New]

From Carleton, MI, via Slate Run, PA; to Rockdale, NY. The segment within Canada is excluded.

Issued in Washington, DC, on April 25, 1986.

James Burns, Jr.,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–9827 Filed 5–1–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 51197-5197]

Export of Technical Data; Commercial Agreements With Certain Countries

Correction

In FR Doc. 86-9075, beginning on page 15315 in the issue of Wednesday, April 23, 1986, make the following corrections:

1. On page 15315, in the third column, the first line of the second paragraph under the heading "Rulemaking Requirements" should read "2. Section 13(a) of the Export".

2. On page 15316, in the first column, in § 379.9, the last word in the second line of paragraph (b) should read "exporter".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-86-1282; FR-2114]

Low Income Housing; Section 8 Existing Housing Assistance Payments Program, Existing Housing; Termination of Tenancy in First Year of Lease Term

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

ACTION: Final rule.

SUMMARY: This rule revises the regulations concerning termination of tenancy in the section 8 Certificate Program. The revision makes it clear that, during the first year of the term of a lease, the owner may not terminate the tenancy for "other good cause" unless the termination is based on Family malfeasance or nonfeasance. It also provides examples of "other good cause" that may not be used as the basis for terminating a tenancy during the first year of the term of a lease.

EFFECTIVE DATE: June 11, 1986.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Existing Housing Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2000, telephone (202) 755-6887. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: By Order Granting Permanent Injunction entered in *Levy, et al.* v. *HUD et al.*, No. C 84-7983 WWS (N.D. Cal, March 22, 1985), HUD was ordered to suspend and not otherwise enforce or implement its regulation at 24 CFR 882.215, as amended in 49 FR 12215, 12242 (March 29, 1984), insofar as the regulation permits termination of tenancy during the first year of a lease for reasons other than serious or repeated violation of the terms and conditions of the lease; violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or other malfeasance or nonfeasance of the tenant. The Department was also ordered to publish a notice in the **Federal Register** setting out a statement contained in the Permanent Injunction and to mail a similar HUD notice to all affected PHAs.

In compliance with the Permanent Injunction, HUD published the statement required by the Court (on May 22, 1985, at 50 FR 15733) suspending that portion of 24 CFR 882.215 that allowed the termination of a tenancy during the first year of a lease for other good cause not based on the malfeasance or nonfeasance of the tenant. The Department also has mailed the HUD notice to the affected public housing agencies (PHAs). In addition, the Department has revised required lease language for the Section 8 Certificate Program to incorporate provisions consistent with the Court Order concerning termination of tenancy during the first year of the lease term.

This final rule adds a new § 882.215(c)(3) to provide explicitly that, in the first year of the term of a lease, the owner may not terminate the tenancy for "other good cause" unless termination is based on Family malfeasance or nonfeasance. The new § 882.215(c)(3) also makes it clear that during the first year of the term of the lease an owner may not terminate a tenancy for other good cause based on any of the following grounds: (1) Failure of a Family to accept the offer of a new lease; (2) an Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit; or (3) a business or economic reason for termination of tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). (The current § 882.215(c)(3) is redesignated as § 882.215(c)(4).)

Other Information

An Environmental Assessment is unnecessary since the Section 8 Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule simply clarifies the regulation to make it more explicit in reflecting current HUD policy regarding termination of tenancy during the first year of the term of a lease.

The subject matter of this rulemaking action relates to grants and is, therefore, exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions with such subject matter to public comment either before or after effectiveness of the action, notwithstanding the statutory exemption. The Secretary has, however, determined that in this instance notice and prior public procedure are unnecessary: In compliance with the Court Order in *Levy, et al.*, v. *Pierce, et al., supra*, the Department has already implemented restrictions on termination of tenancy during the first year of the lease term, for other good cause based on Family malfeasance or nonfeasance, by issuing to PHAs, and by publishing in the **Federal Register**, the statement required by the Court. This rulemaking simply revises the Department's regulations to state explicitly the judicially-determined restrictions on termination of tenancy for other good cause during the first year of a lease term.

This rule was listed as Sequence No. 883 in the Department's Semiannual Agenda of Regulations published on April 21, 1986, (51 FR 14036, 14063) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number for this program is 14.156.

List of Subjects in 24 CFR Part 882

Grant programs: housing and community development, Housing, Manufactured homes, Rent subsidies.

Accordingly, the Department amends 24 CFR Part 882 as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 882.215, paragraph (c)(3) is redesignated as paragraph (c)(4), and a new paragraph (c)(3) is added, to read as follows:

§ 882.215 Assisted tenancy.

* * * * *

(c) * * *

(3) During the first year of the term of a Lease, the Owner may not terminate the tenancy for "other good cause" unless the termination is based on Family malfeasance or nonfeasance. For example, during the first year of the term of Lease, the Owner may not terminate the tenancy for "other good cause" based on any of the following grounds: (i) Failure by the Family to accept the offer of a new Lease; (ii) the Owner's desire to utilize the unit for personal or family use or for a purpose other than as a residential rental unit; or (iii) a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental).

* * * * *

Dated: April 25, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-9912 Filed 5-1-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8085]

Income Tax; Deduction of Employer Liability Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the deduction of employer liability payments. Changes to the applicable tax law were made by the Multi-employer Pension Plan Amendments Act of 1980. The regulations will provide the public with additional guidance needed to comply with that Act and will affect all employers that maintain qualified plans.

DATES: The amendments are effective for employer payments made after September 25, 1980.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3430 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1985, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 404 of the Internal Revenue Code of 1954 (50 FR 20800). These amendments conform the regulations to section 205 of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1287). No comments were submitted on the proposed amendments. No public hearing on the proposed amendments was requested. Accordingly, the amendments are adopted by this Treasury decision substantially as they appeared in the **Federal Register.** Typographical errors which were contained in the notice of proposed rulemaking have been corrected.

Executive Order 12291 and Regulatory Flexibility Act

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

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

List of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

The proposed regulations are adopted without change as set forth below.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 14, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read, in part:

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

Par. 2. The following new § 1.404(g)-1 is added immediately after § 1.404(e)-1A.

§ 1.404 (g)-1 Deduction of employer liability payments.

(a) *General rule.* Employer liability payments shall be treated as contributions to a stock bonus, pension, profit-sharing, or annuity plan to which section 404 applies. Such payments that satisfy the limitations of this section shall be deductible under section 404 when paid without regard to any other limitations in section 404.

(b) *Employer liability payments.* For purposes of this section, employer liability payments mean:

(1) Any payment to the Pension Benefit Guaranty Corporation (PBGC) for termination or withdrawal liability imposed under section 4062 (without regard to section 4062(b)(2)), 4063, or 4064 of the Employee Retirement Insurance Security Act of 1974 (ERISA). Any bond or escrow payment furnished under section 4063 of ERISA shall not be considered as a payment of liability until applied against the liability of the employer.

(2) Any payment to a non-multiemployer plan pursuant to a commitment to the PBGC made in accordance with PBGC Determination of Plan Sufficiency and Termination of

Sufficient Plans. See PBGC regulations, 29 CFR 2617.13(b) for rules concerning these commitments. Such payments shall not exceed an amount necessary to provide for, and used to fund, the benefits guaranteed under section 4022 of ERISA.

(3) Any payment to a multiemployer plan for withdrawal liability imposed under part 1 of subtitle E of title IV of ERISA. Any bond or escrow payment furnished under such part shall not be considered as a payment of liability until applied against the liability of the employer.

(c) *Limitations, etc.*—(1) *Permissible expenses.* A payment shall be deductible under section 404(g) and this section only if the payment satisfies the conditions of section 162 or section 212. Payments made by an entity which is liable for such payments because it is a member of a commonly controlled group of corporations, or trades or businesses, within the meaning of section 414 (b) or (c), shall not fail to satisfy such conditions merely because the entity did not directly employ participants in the plan with respect to which the liability payments were made.

(2) *Qualified plan.* A payment shall be deductible under section 404(g) and this section only if the payment is made in a taxable year of the employer ending within or with a taxable year of the trust for which the trust is exempt under section 501(a). For purposes of this paragraph, the payment timing rules of section 404(a)(6) shall apply.

(3) *Full funding limitation.* (i) If the employer liability payment is to a plan, the total amount deductible for such payment and for other plan contributions may not exceed an amount equal to the full funding limitation as defined in section 412(c)(7) for the taxable year with respect to which the contributions are deemed made under section 404.

(ii) If the total contributions to the plan for the taxable year including the employer liability payment exceed the amount equal to this full funding limitation, the employer liability payment shall be deductible first.

(iii) Any amount paid in a taxable year in excess of the amount deductible in such year under the full funding limitation shall be treated as a liability payment and be deductible in the succeeding taxable years in order of time to the extent of the difference between the employer liability payments made in each succeeding year and the maximum amount deductible for such year under the full funding limitation.

(4) *Maximum deduction allowable under section 404.* The amount deductible under section 404 is limited to the higher of the maximum amount deductible by the employer under section 404(a) or the amount otherwise deductible under section 404(g). If the contributions are to a plan to which more than one employer contributes, this limit shall apply to each employer separately rather than all employers in the aggregate. Thus, each employer may deduct the greater of its allocable share of the deduction determined under sections 404(a) and 413(b)(7) or 413(c)(6) or its allocable share of the amount deductible under section 404(g).

However, pursuant to the rule in subdivision (ii) of subparagraph (3), in determining each employer's allocable share under section 404(a), the total amount deductible under section 404(a) by all employers shall not exceed the difference between the full funding limitation and the total amount deductible by all employers under section 404(g).

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

Example. In the 1983 taxable year, Employer *A* makes a withdrawal liability payment of $700,000 to multiemployer Plan *X* to which Employer *A* and Employer *B* are required to contribute. Employer *A*'s allocable share of the deduction allowable under sections 404(a) and 413(b)(7) in the 1983 taxable year is $600,000. Employer *B*'s allocable share of the deduction allowable under section 404(a) and 413(b)(7) in the 1983 taxable year is $400,000.

The full funding limitation for the 1983 taxable year is $1,000,000. Based on paragraph (c)(4) of this section, Employer *A* may deduct $700,000, the amount of the withdrawal liability payment. However, the deduction of Employer *B* is limited to $300,000, the difference between the full funding limitation and the amount deductible under section 404(g).

(d) *Effective date etc.*—(1) *General rule.* This section is effective for employer payments made after September 25, 1980.

(2) *Transitional rule.* For employer payments made before September 26, 1980, for purposes of section 404, any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which section 404 applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

[FR Doc. 86-9953 Filed 5-1-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8086]

Income Taxes; Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document contains regulatory amendments that change the existing regulatory requirement for electing the $10 million limitation for exempt small issues of industrial development bonds and eliminate the existing regulatory requirement to file certain supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds. The amendments also conform the regulations on exempt small issues to the increase in the limit on the size of such small issues, enacted by the Revenue Act of 1978, and clarify rules regarding capital expenditures. The amendments affect issuers and holders of the exempt small issues, and principal users of facilities financed with the proceeds of these issues.

DATES: The elimination of the requirement to file capital expenditure statements implemented by the amendments to § 1.103–10(b)(2)(vi) is effective on and after September 3, 1971. The amendments relating to the time for and manner of making the $10 million small issue election under § 1.103–10(b)(2)(vi) are effective after May 2, 1986 except that issuers who, before October 29, 1986, make the election in the manner prescribed by § 1.103–10(b)(2)(vi) as in effect prior to amendment by this Treasury decision will be treated as having made the election at the time and in the manner prescribed by § 1.103–10(b)(2)(vi) as amended by this Treasury decision. The amendments to § 1.103–10 relating to the increase in the limit on the size of small issues of industrial development bonds are effective for obligations issued after December 31, 1978, in taxable years ending after such date, and for capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington,

DC. 20224 (Attention: CC:LR:T) (202–566–3590).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(6)(D) of the Internal Revenue Code of 1954. These amendments revise the present requirements of § 1.103–10(b)(2)(vi) relating to elections and supplemental capital expenditure statements with respect to certain small issues of tax-exempt industrial development bonds.

The Treasury decision was not preceded by a notice of proposed rulemaking soliciting public comments because the Treasury Department has determined that the rules promulgated herein will not adversely affect any taxpayer. Accordingly, it is found unnecessary to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Explanation of Provisions

This Treasury decision eliminates the requirement that issuers of exempt small issues of industrial development bonds file a statement with the Service in order to elect the $10 million small issue limitation; however, bond issuers would be required to make the election under section 103(b)(6) by timely making a notation thereof on their books or records with respect to the issue.

This Treasury decision also eliminates the requirement that principal users of facilities financed by certain small issues of tax-exempt industrial development bonds (with respect to which the $10 million limitation has been elected under section 103(b)(6)(D)) file annual supplemental capital expenditure statements concerning such facilities and copies of the election statement with certain income tax returns.

This Treasury decision also contains a provision to conform the Income Tax Regulations to the increase in the limitation, from $5 million to $10 million, in the size of certain exempt small issues, enacted by section 331(a) of the Revenue Act of 1978 (92 Stat. 2839). This document also contains amendments to clarify rules regarding capital expenditures.

Nonapplicability of Executive Order 12291

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

Regulatory Flexibility Act

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

Drafting Information

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

Paperwork Reduction Act

The elimination of the collection of information contained in this regulation has been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. This reduction in the requirements had been approved by OMB under control number 1545–0940.

List of Subjects

26 CFR 1.61–1–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

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

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

Authority: 26 U.S.C. 7805. * * * Section 1.103–10 also issued under 26 U.S.C. 103(b)(6). * * *

Par 2. Section 1.103–10 (relating to exemption for certain small issues of industrial development bonds) is amended as follows:

(1) The phrase "section 103(c)" is removed each place it appears as a reference or part of a reference and the phrase "section 103(b)" is inserted in lieu thereof as a reference or part of a reference.

(2) Paragraph (a) is amended by adding the following new sentence at the end thereof: "For bonds issued before January 1, 1979, in taxable years ending before such date, and for capital expenditures made before January 1, 1979, with respect to such bonds, paragraphs (b), (c), and (d) of this section shall be applied by substituting $5 million for $10 million."

(3) Paragraph (c)(2) is amended by revising the caption to read "10 million or less refinancing issue." and by removing "$5" each place it appears and inserting in lieu thereof "$10".

(4) Paragraph (d)(1) is amended by removing "$5" and inserting in lieu thereof "$10".

(5) Paragraph (d)(3)(ii) is amended by removing "$5" each place it appears and inserting in lieu thereof "$10".

(6) Paragraph (b)(2) is amended by revising the heading and subdivisions (i), (ii)(*a*), and (vi) thereof, to read as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * *

(b) *Small issue exemption.* * * *

(2) *$10 million or less.* (i) Under section 103(b)(6)(D), the issuing State or local governmental unit may elect to have an aggregate authorized face amount of $10 million or less, in lieu of the $1 million exemption otherwise provided for in section 103(b)(6)(A), with respect to issues of obligations that are industrial development bonds (within the meaning of section 103(b)(2)) issued after October 24, 1968. If the election is made in a timely manner, the bonds will be treated as obligations of a State or local governmental unit described in section 103(a)(1) and § 1.103–1 if the sum of—

(*a*) The aggregate face amount of the issue including the aggregate outstanding face amount of any prior $1 million or $10 million exempt small issues taken into account under section 103(b)(6)(B) and paragraph (d) of this section, and

(*b*) The aggregate amount of "section 103(b)(6)(D) capital expenditures" (within the meaning of paragraph (b)(2)(ii) of this section), is $10 million or less. In the case of an issue of obligations that qualified for exemption under section 103(b)(6)(A) and this paragraph, if a section (b)(6)(D) capital expenditure made after the date of issue has the effect of making taxable the interest on the issue, under section 103(b)(6)(G) the loss of tax exemption for the interest shall begin only with the

date on which the expenditure that caused the issue to cease to qualify under the $10 million limit was paid or incurred. See paragraph (b)(2)(vi) of this section for the time and manner in which the issuer may elect the $10 million exemption. See section 103(b)(6)(H) and paragraph (c)(2) of this section for the treatment of certain refinancing issues of $10 million of less.

(ii) * * *

(*a*) The capital expenditure was financed other than out of the proceeds of issues to the extent such issues are taken into account under paragraph (b)(2)(i)(*a*) of this section.

* * * * *

(vi) The issuer may make the election provided by section 103(b)(6)(D) and this paragraph (b)(2) (assuming that the bonds otherwise qualify under section 103(b)(6) by noting the election affirmatively at or before the time of issuance of the issue in question on its books or records with respect to the issue. The term "books or records" includes the bond resolution or other similar legislation for the issue in question as well as the bond transcript or other compilation of bond and bond-related documents. If the issuer fails to make an election at the time and in the manner prescribed in this paragraph (b)(2), the issue will not be treated as described in section 103(b)(6)(D), and interest thereon will be includible in gross income.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT—[AMENDED]

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

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.103–10(b)(2)(vi) . . . 1545–0940".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 28, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–9951 Filed 5–1–86; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Parts 53, 54, 141, 301 and 602

[T.D. 8084]

Excise Taxes; Second Tier Excise Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to second tier excise taxes. Changes to the applicable tax law were made by Pub. L. 96–596. The regulations will affect private foundations, black lung benefit trusts, pension plans, and disqualified persons with respect to the foregoing who may become liable for second tier taxes within the meaning of section 4963(b) of the Internal Revenue Code of 1954.

DATES: The amendments to the CFR are effective upon publication in the **Federal Register.** The amendments to §§ 53.4941(e)–1(a)(1), 53.4942(a)–1(c)(1)(ii), 53.4943–9(a)(1), 53.4944–5(a)(1), and 53.4963–1(e)(7) apply to first tier taxes imposed under sections 4941, 4942, 4943, and 4944 after December 31, 1969. Under § 53.4951–1 (a) and (f), the amendment to § 53.4941(e)–1(a)(1) applies to first tier taxes imposed under section 4951 after December 31, 1977. The amendments to §§ 54.4971–1(e) and § 53.4963–1(e)(7) apply to first tier taxes imposed under section 4971 after September 2, 1974. The amendments to § 54.4975–1(d) apply to first tier taxes imposed under section 4975 after December 31, 1974. The amendments relating to second tier taxes (as defined in section 4963(b)) apply to second tier taxes assessed after December 24, 1980.

FOR FURTHER INFORMATION CONTACT: George B. Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: GC:LR:T:EE–16–81, 202–566–3422 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 13, 1984, the **Federal Register** published proposed amendments to the Foundation and Similar Excise Taxes Regulations (26 CFR Part 53), to the Pension Excise Taxes Regulations (26 CFR Part 54), to the Temporary Excise Tax Regulations under the Employee Retirement Income Security Act of 1974 (26 CFR Part 141), and to the Procedure and Administration Regulations (26 CFR Part 301), under sections 4941, 4942, 4943, 4944, 4945, 4961, 4962, 4971, 4975, 6213, 6503, 6861, and 7422. One correction was published in the issue of Friday, March 2, 1984, at page 7836. The amendments were proposed to conform the regulations to section 2 of the Act of December 24, 1980 (Pub. L. No. 96–596, 94 Stat. 3469). No comments were received; no public hearing was requested or held. The amendments are therefore adopted as revised by this Treasury decision.

Explanation of Provisions

Final Regulations

The amendments conform the regulations to the changes to the Internal Revenue Code made by section 2 of Pub. L. 96–596. The Code imposes excise taxes in two tiers to insure compliance with certain provisions of the Code by private foundations, black lung benefit trusts, pension trusts, and disqualified persons with respect to the foregoing entities. A first tier excise tax is imposed automatically if the foundation, trust, or disqualified person engages in a prohibited act (such as self-dealing between a disqualified person and a private foundation), or fails to perform a required act (such as a private foundation's failure to distribute the amount described in section 4942). The Code provides for a much larger second tier excise tax which is imposed at the end of a "taxable period," which begins with the event giving rise to the tax and ends on the earliest of (i) the date a notice of deficiency with respect to the first tier tax is mailed, or (ii) the date the first tier tax is assessed if no deficiency notice is mailed, or (iii) (in some cases) the date the taxable act is corrected. Although the second tier tax is imposed at the end of the taxable period, it is not assessed until after a notice of deficiency is mailed (see sections 6211 through 6216) unless a termination assessment (section 6851) or jeopardy assessment (section 6861) is made.

Under new section 4961, if the taxpayer corrects the act (or failure to act) giving rise to the second tier tax within a "correction period," the tax is not to be assessed, and if assessed, it is to be abated, and if collected, it is to be credited or refunded as an overpayment. See § 53.4961–1. The correction period begins on the day the taxable event occurs and ends 90 days after the date of mailing of a notice of deficiency with respect to the second tier tax, but may be extended in certain cases. See § 53.4963–1.

Other provisions relate to court proceedings concerning the amount of tax and the timeliness of correction, as well as deferral of assessment or collection during certain court actions. See § 53.4961–2.

Changes to Notice of Proposed Rulemaking

The notice of proposed rulemaking proposed deleting or revising a special rule for determining the end of the taxable period and invited comments on

this aspect of the proposal. Although no comments were received, upon reconsideration, the Internal Revenue Service has determined to retain the existing special rule. The rule is also incorporated explicitly in regulations for chapter 43 excise taxes (relating to pension plans) in light of the revision of § 141.4975–13 and in the interest of promoting procedural uniformity between chapter 42 and 43 taxes.

Under the special rule, the taxable period ends upon filing of a waiver of the restrictions on assessment and collection of a deficiency in first tier tax. This rule does not apply under section 4945 because the taxable period does not affect the amount of the first or second tier tax under section 4945.

Thus, the following provisions are not deleted or revised, as originally proposed: § 53.4941 (e)–1(a)(3); Example 3 of § 53.4941 (e)–1(a)(4); § 53.4942(a)–1(c)(1)(ii); § 53.4943–9(a)(2); and § 53.4944–5(a)(2). In addition, a clarifying change has been made to § 53.4961–2, proposed new section 53.4963–1 has been adopted as § 53.4963–1, and cross references to section 4963 have been adopted as cross references to section 4963.

Study of § 53.4943–9(a)(1)(ii)

The Internal Revenue Service believes that § 4943–9(a)(1)(ii), which provides that the taxable period ends upon elimination of excess business holdings, may not be consistent with the statute. The Service is studying the provision and expects to propose a conforming change.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicability of Executive Order 12291

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

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0024.

Drafting Information

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

List of Subjects

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees, Black Lung benefit trusts.

26 CFR Part 54

Excise taxes, Pensions.

26 CFR Part 141

Excise taxes, pensions, Employee Retirement Income Security Act of 1974.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments of the Regulations

Accordingly, amendments to 26 CFR Parts 53, 54, 141, 301, and 602 are adopted as set forth below:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES—[AMENDED]

Paragraph 1. The authority for Part 53 continues to read in part:

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

§ 53.4941 [Amended.]

Par. 2. In § 53.4941(b)–1, paragraph (a) is amended by removing the language "correction period (as defined in § 53.4941(e)–1(d))." and adding in its place the language "taxable period (as defined in § 53.4941(e)–1(a))."

Par. 3. Section 53.4941 (e)–1 is amended as follows:

1. In paragraph (b)(3) and in Example (2) of paragraph (e)(ii), the words "correction period" are removed and the words "taxable period" are added in their place; and

2. Paragraph (a)(1), Example (4) of paragraph (b)(4), and paragraph (d) are revised to read as set forth below.

§ 53.4941(e)–1 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of any act of self-dealing, the term "taxable period" means the period beginning with the date on which the act of self-dealing occurs and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4941(a)(1),

(ii) The date on which correction of the act of self-dealing is completed, or

(iii) The date on which the tax imposed by section 4941(a)(1) is assessed.

* * * * *

(b) *Amount involved.* * * *

(4) *Examples.* * * *

Example (4). D, a disqualified person with respect to private foundation T, purchases 100 shares of stock from T for $5,000 on June 15, 1982. The fair market value of the 100 shares of stock on that date is $4,800. D sells the 100 shares of stock on December 20, 1983, for $6,000. On December 27, 1983, a notice of deficiency with respect to the taxes imposed under subsections (a) and (b) of section 4941 is mailed to D and the taxable period ends. D fails to correct during the taxable period. Between June 15, 1982, and the end of the taxable period, the stock was quoted on the New York Stock Exchange at a high of $67 per share. The amount involved with respect to the tax imposed under subsection (a) is $5,000, and the amount involved with respect to the tax imposed under subsection (b) for failure to correct is $6,700 (100 shares at $67 per share), the highest fair market value during the taxable period.

* * * * *

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963 (e), see section 4961 (a), and the regulations thereunder.

* * * * *

Par. 4. Section 53.4942(a)–1 is amended as follows:

1. In paragraph (a)(2), the language "correction period" and "paragraph (c)(3)" is removed and the language "taxable period" and "paragraph (c)(1)", respectively, is added in its place;

2. In paragraph (c)(4), Example (3) is removed; and

3. Paragraph (a)(4), paragraph (c)(1)(i), and paragraph (c)(3) are revised to read as set forth below.

§ 53.4942(a)-1 Taxes for failure to distribute income.

(a) *Imposition of tax.* * * *

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

Example (1). *M*, a private foundation which uses the calendar year as its taxable year, has at the end of 1981, $50,000 of undistributed income (as defined in paragraph (a) of § 53.4942 (a)-2) for 1981. As of January 1, 1983, $40,000 is still undistributed. On August 15, 1983, a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) is mailed to *M* under section 6212 (a) and the taxable period ends. Thus, under these facts, an initial excise tax of $6,000 (15 percent of $40,000) is imposed upon *M*. An additional excise tax of $40,000 (100 percent of $40,000) is imposed by section 4942(b). Under section 4961(a), however, if the undistributed income is reduced to zero during the correction period, this latter tax will not be assessed, and if assessed, it will be abated, and if collected, it will be credited or refunded as an overpayment.

Example (2). Assume the facts as stated in example (1), except that the notice of deficiency is mailed to *M* on September 7, 1984, and as of January 1, 1984, only $10,000 of the $50,000 of undistributed income with respect to 1981 is undistributed. Therefore, initial excise taxes of $6,000 (15 percent of $40,000, M's undistributed income from 1981, as of January 1, 1983) and $1,500 (15 percent of $10,000, *M's* undistributed income from 1981 as of January 1, 1984) are imposed by section 4942(a). If the $10,000 remains undistributed as of September 7, 1984, the end of the taxable period, an additional excise tax of $10,000 (100 percent of $10,000, *M's* undistributed income from 1981, as of September 7, 1984) is imposed by section 4942(b).

* * * * *

(c) *Certain periods.* For purposes of this section—

(1) *Taxable period.* (i) The term "taxable period" means, with respect to the undistributed income of a private foundation for any taxable year, the period beginning with the first day of the taxable year and ending on the earlier of:

(A) The date of mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed under section 4942(a), or

(B) The date on which the initial excise tax imposed under section 4942(a) is assessed.

For example, assume M, a private foundation which uses the calendar year as the taxable year, has $15,000 of undistributed income for 1981. A notice of deficiency is mailed to M under section 6212(a) on June 1, 1983. With respect to the undistributed income of M for 1981, the taxable period began on January 1, 1981, and ended on June 1, 1983.

* * * * *

(3) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961 (a) and the regulations thereunder.

* * * * *

Par. 5. In § 53.4942(a)-3, Example (2) of paragraph (d)(3) is revised to read as follows:

§ 53.4942(a)-3 Qualifying distributions defined.

* * * * *

(d) *Treatment of qualifying distributions.* * * *

(3) *Examples.* * * *

Example (2). *M*, a private foundation which uses the calendar year as the taxable year, has undistributed income of $300 for 1981, $200 for 1982, and $400 for 1983. On January 14, 1983, *M* makes its first qualifying distribution in 1983 when it sets aside (within the meaning of paragraph (b) of this section) $700 for construction of a hospital. On February 24, 1983 a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) in regard to *M*'s undistributed income for 1981 is mailed to *M* under section 6212(a). *M* notifies the Commissioner in writing on March 24, 1983, that it is making an election under subparagraph (2) of this paragraph to have its distribution of January 14th applied first against its undistributed income for 1982, next against its undistributed income for 1981, and last against its undistributed income for 1983. Thus, $200 of the $700 qualifying distribution is treated as made out of the undistributed income for 1982; $300, out of undistributed income for 1981; and $200 ($700 less the sum of $200 and $300), out of the undistributed income for 1983. Thus, an initial excise tax of $45 (15 percent of $300) is imposed under section 4942(a). Since *M* made the election described above, the $300 (treated as distributed out of undistributed income for 1981) corrects (within the meaning of section 4963(d)(2)) the taxable act because the undistributed income for 1981 is reduced to zero. Furthermore, correction is effected within the correction period (as defined in section 4963(e)(1) and § 53.4963-1(e)). Therefore, under the provisions of section 4961(a), the additional tax imposed by section 4942(b) will not be assessed.

* * * * *

Par. 6. In § 53.4943-2, paragraph (b) is revised to read as follows:

§ 53.4943-2 Imposition of tax on excess business holdings of private foundations.

* * * * *

(b) *Additional tax.* In any case in which the initial tax is imposed under section 4943(a) with respect to the holdings of a private foundation in any business enterprise, if, at the close of the taxable period (as defined in section 4943(d)(2) and § 53.4943-9) with respect to such holdings the foundation still has excess business holdings in such enterprise, there is imposed a tax under section 4943(b) equal to 200 percent of the value of such excess holdings as of the last day of the taxable period.

Par. 7. In § 53.4943-9, paragraph (a)(1) and paragraph (b) are revised to read as set forth below.

§ 53.4943-9 Business holdings; certain periods.

(a) *Taxable period*—(1) *In general.* For purposes of section 4943, the term "taxable period" means, with respect to any excess business holdings of a private foundation in a business enterprise, the period beginning with the first day on which there are such excess business holdings and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on the holdings by the section 4943(a);

(ii) The date on which the excess is eliminated; or

(iii) The date on which the tax imposed by section 4943(a) is assessed.

For example, *M*, a private foundation, first has excess business holdings in *X*, a corporation, on February 5, 1972. A notice of deficiency is mailed under section 6212 to *M* on June 1, 1974. With respect to *M*'s excess business holdings in *X*, the taxable period begins on February 5, 1972, and ends on June 1, 1974.

* * * * *

(b) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4863(e), see section 4861(a) and the regulations thereunder.

* * * * *

§ 53.4944-2 [Amended]

Par. 8. Section 53.4944-2 is amended as follows:

1. In paragraph (a), the words "correction period" are removed from the first and third sentences and the words "taxable period" are added in their place, and the language "4944(e)(3)" is removed from the first sentence and the language "4944(e)(1)" is added in its place; and

2. At the end of paragraph (b), in the fourth sentence of Example (1) in paragraph (c), and in the first and second sentence of Example (3) in paragraph (c), the words "correction period" are removed and the words "taxable period" are added in their place.

Par. 9. In § 53.4944-5, paragraphs (a)(1) and (d) are revised to read as set forth below.

§ 53.4944-5 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of section 4944, the term "taxable period" means, with respect to any investment which jeopardizes the carrying out of a private foundation's exempt purposes, the period beginning with the date on which the amount is invested and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on the making of the investment by section 4944(a)(1);

(ii) The date on which the amount invested is removed from jeopardy; or

(iii) The date on which the tax imposed by section 4944(a)(1) is assessed.

* * * * *

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

Par. 10. Section 53.4945-1 is amended as follows:

1. In the first sentence of paragraph (b)(1), the words "correction period" are removed and the words "taxable period" are added in their place; and

2. Example (2) in paragraph (c)(3) and paragraph (e) are revised to read as set forth below.

§ 53.4945-1 Taxes on taxable expenditures.

* * * * *

(c) *Special rules.* * * *

(3) *Examples.* * * *

Example (2). Assume the same facts as in example (1). Further assume that within the taxable period A makes a motion to correct the taxable expenditure at a meeting of the board of directors. The motion is defeated by a two-to-one vote, A voting for the motion and B and C voting against it. In these circumstances an additional tax is imposed on the private foundation in the amount of $100,000 (100 percent of $100,000). The additional tax imposed on B and C is $10,000 (50 percent of $100,000 subject to a maximum of $10,000). B and C are jointly and severally liable for the $10,000, and this sum may be collected by the Service from either of them.

* * * * *

(e) *Certain periods*—(1) *Taxable period.* For purposes of section 4945, the term "taxable period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on taxable expenditures by section 4945(a)(1); or

(ii) The date on which the tax imposed by section 4945(a)(1) is assessed.

(2) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

Par. 11. Sections 53.6001-1 through 53.7101-1 (Subpart K) of Part 53 are redesignated Subpart L, and a new subpart K is added to read as follows:

Subpart K—Second Tier Excise Taxes

Sec.

Subpart K—Second Tier Excise Taxes

§ 53.4961-1 Abatement of second tier taxes for correction within correction period.

If any taxable event is corrected during the correction period for the event, then any second tier tax imposed with respect to the event shall not be assessed. If the tax has been assessed, it shall be abated. If the tax has been collected, it shall be credited or refunded as an overpayment. For purposes of this section, the tax imposed includes interest, additions to the tax and additional amounts. For definitions of the terms "second tier tax," "taxable event," "correct," and "correction period," see § 53.4963-1.

§ 53.4961-2 Court proceedings to determine liability for second tier tax.

(a) *Introduction.* Under section 4961 (b) and (c), the period of limitations on collection may be suspended and assessment or collection of first or second tier tax may be prohibited during the pendency of administrative and judicial proceedings conducted to determine a taxpayer's liability for second tier tax. This section provides rules relating to the suspension of the limitations period and the prohibitions on assessment and collection. In addition, this section describes the administrative and judicial proceedings to which these rules apply.

(b) *Initial proceeding*—(1) *Defined.* For purposes of subpart K, an initial proceeding means a proceeding described in subparagraph (2) or (3).

(2) *Tax Court proceeding before assessment.* A proceeding is described in this subparagraph (2) if it is a proceeding with respect to the taxpayer's liability for second tier tax and is commenced in accordance with section 6213 (a).

(3) *Refund proceeding commenced before correction period ends.* A proceeding is described in this subparagraph (3) if it is a proceeding commenced under section 7422, in accordance with the provisions of § 53.4963-1(e) (4) and (5) (relating to prerequisites to extension of the correction period during certain refund proceedings), and with respect to the taxpayer's liability for second tier tax.

(c) *Supplemental proceeding*—(1) *Jurisdiction.* If a determination in an initial proceeding that a taxpayer is liable for a second tier tax has become final, the court in which the initial proceeding was commenced shall have jurisdiction to conduct any necessary supplemental proceeding to determine whether the taxable event was corrected during the correction period.

(2) *Time for beginning proceeding.* The time for beginning a supplemental proceeding begins on the day after a determination in an initial proceeding becomes final and ends on the 90th day after the last day of the correction period.

(d) *Restriction on assessment during Tax Court proceeding.* If a supplemental proceeding described in section 4961 (b) and § 53.4961-2(c) is commenced in the Tax Court, the provisions of the second and third sentences of section 6213(a) and the first and third sentences of § 301.6213-1(a)(2) apply with respect to a deficiency in second tier tax until the decision of the Tax Court in the supplemental proceeding is final.

(e) *Suspension of period of collection for second tier tax*—(1) *Scope.* Except as provided in subparagraph (6), this paragraph (e) applies to the second tier tax assessed with respect to a taxable event if a claim described in subparagraph (2) is filed.

(2) *Claim for refund.* A claim for refund is described in this subparagraph (2) if, no later than 90 days after the day on which the second tier tax is assessed with respect to a taxable event, the taxpayer—

(i) Pays the full amount of first tier tax for the taxable period, and

(ii) Files a claim for refund of the amount paid.

(3) *Collection prohibited.* No levy or proceeding in court for the collection of the second tier tax shall be made, begun, or prosecuted until the end of the collection prohibition period described in subparagraph (5). Notwithstanding section 7421(a), the collection by levy or proceeding may be enjoined during the collection prohibition period by a proceeding in the proper court.

(4) *Suspension of running of period of limitations on collection.* With respect to a second tier tax to which this paragraph (e) applies, the running of the period of limitations provided in section 6502 (relating to collection of tax by levy

or by a proceeding in court) shall be suspended for the collection prohibition period described in subparagraph (5).

(5) *Collection prohibition period.* The collection prohibition period begins on the day the second tier tax is assessed and ends on the latest of:

(i) The day a decision in a refund proceeding commenced before the 91st day after denial of the claim described in subparagraph (2) of this paragraph (including any supplemental proceeding under § 53.4961–2(c)) becomes final;

(ii) The 90th day after the claim referred to in subparagraph (2) is denied; or

(iii) The 90th day after the second tier tax is assessed.

(6) *Jeopardy collection.* If the Secretary makes a finding that the collection of the second tier tax is in jeopardy, nothing in this paragraph (e) shall prevent the immediate collection of such tax.

(f) *Finality*—(1) *Tax Court proceeding.* For purposes of this subpart K, section 7481 applies in determining when a decision in a Tax Court proceeding becomes final.

(2) *Refund proceeding.* For purposes of this subpart K, § 301.7422–1 applies in determining when a decision in a refund proceeding becomes final.

§ 53.4963–1 Definitions.

(a) *First tier tax.* For purposes of this subpart K, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975. A first tier tax may also be referred to as an "initial tax" in parts 53 and 54.

(b) *Second tier tax.* For purposes of this subpart K, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975. A second tier tax may also be referred to as an "additional tax" in parts 53 and 54.

(c) *Taxable event.* For purposes of this subpart K, the term "taxable event" means any act, or failure to act, giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(d) *Correct*—(1) *In general.* Except as provided in subparagraph (2), the term "correct" has the same meaning for purposes of this subpart K as in the section which imposes the second tier tax or the regulations thereunder.

(2) *Special rules.* The term "correct" means—

(i) For a second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(ii) For a second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(iii) For a second tier tax imposed by section 4944(b), removing the investment from jeopardy.

(e) *Correction period*—(1) *In general.* The correction period with respect to any taxable event shall begin with the date on which the taxable event occurs and shall end 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the second tier tax imposed with respect to the taxable event.

(2) *Extensions of correction period.* The correction period referred to in subparagraph (1) of this paragraph shall be extended by any period in which a deficiency cannot be assessed under section 6213(a). In addition, the correction period referred to in subparagraph (1) of this paragraph (e) shall be extended in accordance with subparagraph (3), (4), and (5) of this paragraph except that subparagraph (4), or (5) shall not operate to extend a correction period with respect to which a taxpayer has filed a petition with the United States Tax Court for redetermination of a deficiency within the time prescribed by section 6213(a).

(3) *Extensions by Commissioner.* The correction period referred to in subparagraph (1) of this paragraph may be extended by any period which the Commissioner determines is reasonable and necessary to bring about correction (including, for taxes imposed by section 4975, equitable relief sought by the Secretary of Labor) of the taxable event. The Commissioner ordinarily will not extend the correction period unless the following factors are present.

(i) The taxpayer on whom the second tier tax is imposed, the Secretary of Labor (for taxes imposed by section 4975), or an appropriate State officer (as defined in section 6104(c)(2)) is actively seeking in good faith to correct the taxable event;

(ii) Adequate corrective action cannot reasonably be expected to result during the unextended correction period;

(iii) For taxes imposed by section 4975, the Secretary of Labor requests the extension because subdivision (ii) applies; and

(iv) For taxes imposed by chapter 42 (other than taxes imposed by section 4904), the taxable event appears to have been an isolated occurrence so that it appears unlikely that similar taxable events will occur in the future.

(4) *Extension for payment of first tier tax.* If, within the unexpected correction period, the taxpayer pays the full amount of the first tier tax imposed with respect to the taxable event the Commissioner shall extend the correction period to the later of—

(i) Ninety days after the payment of the first tier tax, or

(ii) The last day of the correction period determined without regard to this paragraph.

(5) *Extensions for filing claim for refund or refund suit.* If prior to the expiration of the correction period (including extensions) a claim for refund is filed with respect to payment of the full amount of the first tier tax imposed with respect to the taxable event, the Commissioner shall extend the correction period during the pendency of the claim plus an additional 90 days. If within that time a suit or proceeding referred to in section 7422(g) with respect to the claim is filed, the Commissioner shall extend the correction period until the determination in the suit for refund (determined without regard to a supplemental proceeding under section 4861(b)) is final, determined under § 301.7422–2(a).

(6) *End of correction period if waiver accepted.* If the notice of deficiency referred to in paragraph (1) is not mailed because there is a waiver of the restrictions on assessment and collection of the deficiency or because the deficiency is paid, the correction period will end with the end of the collection prohibition period described in § 53.4961–2(e)(5).

(7) *Date on which taxable event occurs.* For purposes of subparagraph (1), the taxable event shall be treated as occurring—

(i) Under section 4942, on the first day of the taxable year for which there is undistributed income,

(ii) Under section 4943, on the first day on which there are excess business holdings,

(iii) Under section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(iv) In all other cases, the date on which the event occurred.

(f) *Effective date.* The provisions of this subpart K are effective with respect to second tier taxes assessed after December 24, 1980. The preceding sentence shall not be construed to permit the assessment of a tax in a case to which, on December 24, 1980, the doctrine of res judicata applied.

PART 54—PENSION EXCISE TAX REGULATIONS—[AMENDED]

Par. 12. The authority for Part 54 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. Section 54.4971–1 is added immediately after the authority citation for Part 54 to read as follows:

§ 54.4971–1 General rules relating to excise tax on failure to meet minimum funding standards.

(a) [Reserved]

(b) [Reserved]

(c) *Additional tax.* Section 4971(b) imposes an excise tax in any case in which an initial tax is imposed under section 4971(a) on an accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period (as defined in section 4971(c)(3)). The additional tax is 100 percent of the accumulated funding deficiency to the extent not corrected.

(d) [Reserved]

(e) *Definition of taxable period*—(1) *In general.* For purposes of any accumulated funding deficiency, the term "taxable period" means the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4971(a), or

(ii) The date on which the tax imposed by section 4971(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (e)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

Par. 14. Section 54.4975–1 is added immediately after § 54.4974–1 to read as follows:

§ 54.4975–1 General rules relating to excise tax on prohibited transactions.

(a) *Scope.* This section provides general rules for the imposition of the excise taxes on prohibited transactions.

(b) *Initial tax.* Section 4975(a) imposes an initial tax on each prohibited transaction. The initial tax is 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period.

(c) *Additional tax.* Section 4975(b) imposes an excise tax in any case in which an initial tax is imposed under section 4975(a) on a prohibited transaction and the prohibited transaction is not corrected within the taxable period (as defined in paragraph (d) of this section). The additional tax is 100 percent of the amount involved with respect to the prohibited transaction.

(d) *Taxable period*—(1) *In general.* For purposes of any prohibited transaction, the term "taxable period" means the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4975(a);

(ii) The date on which correction of the prohibited transaction is completed; or

(iii) The date on which the tax imposed by section 4975(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (d)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974—[AMENDED]

Par. 15. The authority for Part 141 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. In § 141.4975–13, the title is revised to read as set forth below, and the language "4975(f) (2), (4), (5) and (6)" is removed and the language "4975(f) (4) and (5)" is added in its place.

§ 141.4975–13 Definition of "amount involved" and "correction".

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION—[AMENDED]

Par. 17. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 18. In § 301.6212–1 the following two sentences are added at the end of paragraph (c):

§ 301.6212–1 Notice of deficiency.

* * * * *

(c) *Further deficiency letters restricted.* * * * Solely for purposes of applying the restriction of section 6212(c), a notice of deficiency with respect to second tier tax under chapter 43 shall be deemed to be a notice of deficiency for the taxable year in which the taxable event occurs. See § 53.4963–1(e)(7) (iii) or (iv) for the date on which the taxable event occurs.

Par. 19. In § 301.6213–1, the first sentence of paragraph (e) is revised to read as follows:

§ 301.6213–1 Restrictions applicable to deficiencies; petition to Tax Court.

* * * * *

(e) *Suspension of filing period for certain chapter 42 and chapter 43 taxes.* The period prescribed by section 6213 (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975, shall be suspended for any other period which the Commissioner has allowed for making correction under § 53.4963–1(e)(3). * * *

Par. 20. Paragraph (a) of § 301.6503 (a)–1 is amended by adding a new subparagraph (3) to read as follows:

§ 301.6503 (a)–1 Suspension of running of period of limitation; issuance of statutory notice of deficiency.

(a) *General rule.* * * *

(3) For provisions relating to suspension of the running of the period of limitation with respect to collection of "second tier" excise taxes (as defined in section 4963) until final resolution of a refund proceeding described in sections 4961 and 7422 for the determination of the taxpayer's liability for the second tier taxes, see § 53.4961–2 (e) (4).

* * * * *

§ 301.6503 [Amended]

Par. 21. Section 301.6503 (g)–1 is amended by removing all of the text that follows the word "correction" and adding the language "under section 4963 (e) (1) (B)." in its place.

§ 301.6861–1 [Amended]

Par. 22. In § 301.6861–1, paragraph (g) is amended by removing the last sentence.

Par. 23. Section 301.7422–1 is revised to read as follows:

§ 301.7422–1 Special rules for certain excise taxes imposed by chapter 42 or 43.

(a) *Finality of refund proceeding.* For purposes of sections 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4961, 4963, 4971, and 4975, and the regulations thereunder, a decision in a suit for refund instituted under the provisions of this section shall be final—

(1) Upon the expiration of the time allowed for filing a notice of appeal from a decision of the United States Claims Court or of the United States District Court, if no timely notice of appeal is filed; or

(2) Upon the expiration of the time allowed for filing a petition for certiorari from a decision of the United States Claims Court, or from a decision of the United States District Court, which has been affirmed or the appeal dismissed by the United States Court of Appeals, if

no timely petition for certiorari is filed; or

(3) If a petition for certiorari has been filed, thirty days from the denial of such petition; or

(4) Thirty days from the date of a decision of the United States Supreme Court if no timely petition for rehearing is filed; however, if a timely petition for rehearing from such a decision is filed, and is denied, thirty days from the denial thereof; or

(5) If a decision is entered upon a rehearing or if a decision is modified or reversed as the result of a decision of a higher court, upon the expiration, with respect to the decision on rehearing or the modified or reversed decision, of periods similar to those provided in subparagraphs (1) through (4).

(b) *Right to bring action.* With respect to any taxable event, payment of the full amount of first tier tax for the taxable period shall constitute sufficient payment in order to maintain an action under this section with respect to the second tier tax.

(c) *Limitation on suit for refund.* No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975 with respect to any taxable event unless—

(1) No other suit has been maintained for credit or refund of any tax imposed by such sections with respect to such taxable event; and

(2) No petition has been filed in the Tax Court with respect to a deficiency in any tax imposed by such sections with respect to such taxable event.

(d) *Final determination of issues.* For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975, together with a supplemental proceeding (if any) under section 4961 (b), with respect to any taxable event, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such taxable event under such sections. Consequently, failure by the parties to the suit to bring before the Court any question described in the preceding sentence shall constitute a bar to the question.

(e) *Definitions.* For definitions of the terms "taxable event," "first tier tax," and "second tier tax," see § 53.4963–1.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT—[AMENDED]

Par. 24. Part 602 is amended as follows:

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

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

2. Section 602.101(c), is amended by inserting in the appropriate places in the tables.

"53.4961–2 (e) (2).....1545–0024," and
"53.4963–1 (e) (5).....1545–0024".

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 3, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 86–9954 Filed 5–1–86; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 117 and 118

[CGD 84–022]

Bridge Lighting and Other Signals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the bridge lighting regulations by adding standards for retroreflectors, daymarks, fog signals, vertical clearance gauges, radar reflectors, racons, and other signals. Due to a history of accidents involving vessels hitting bridges, the old regulations, which refer only to bridge lighting, needed to be expanded to include means of signalling in daylight or fog and of informing vessel operators of the vertical clearance at bridges. These amendments are intended to promote safe navigation through bridges across the navigable waters of the United States.

DATES: This rule is effective on June 2, 1986. The incorporation by reference of the material listed in the rule is approved by the Director of the Federal Register as of June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred T. Meschter, (202) 426–0942.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (50 FR 4529) proposing to revise 33 CFR Parts 117 and 118. Opportunity for comment on the proposal was given until March 18, 1985.

Forty-four comments were received directly in response to the NPRM from government agencies, railroads, boat owners and associations, and private individuals. Several of the responses did not contain any substantive comments. In addition to the comments submitted directly in response to the NPRM, 36 comments were received at Coast Guard district offices. These comments, along with the views of various Coast Guard officials, have been included in the public docket.

One writer hoped a public hearing would be held but did not indicate a reason why. After considering all comments received, the Coast Guard determined that the opportunity to make oral presentations would not substantially aid the rulemaking process. Therefore, a public hearing was not held.

Drafting Information

The principal persons involved in drafting these regulations are Mr. Alfred T. Meschter, Project Manager, and Mr. Stephen H. Barber, Project Counsel.

Discussion of Comments

Several states and most railroad companies objected on the grounds that, because the proposed signals, such as racons, radar reflectors, lateral lighting, and retroreflective materials, were navigation aids, their cost should be borne by the users or the Federal Government. Bridge owners are allowed to construct bridges over navigable waters of the United States as long as the navigation through or under them is not unreasonably obstructed. The statutes which provide this privilege are clear in requiring the owner to provide lighting and other signals necessary to render the navigation free and reasonably unobstructed. The high frequency and cost of vessel/bridge accidents indicate that additional and standardized signals to reduce or prevent these accidents are necessary.

Several bridge owners stated that the rule is unnecessary and burdensome and questioned the Coast Guard's assessment of economic impact and costs. Coast Guard records show that from 1981 through 1984 there were 401 vessel/bridge accidents totaling $22,030,081 in damage to vessels, $18,827,163 in damage to bridges, and $9,384,112 in damage to cargo. The number of accidents varied between 81 to 111 annually. The cost estimate of $19,000 per bridge assumes a bridge which presently has no signals and which would be required to install all the signals addressed in this rule, including racons. Without racons, which would be required on very few bridges, the cost is estimated to be $4,000. Even if these estimates are low, the cost to the bridge owner would be far less than the

cost of a single, typical vessel/bridge accident.

Several comments concerned the increase in bridge owner's liability resulting from failure of required signals, especially high maintenance items such as racons. There would be an increase in liability only if the bridge owner fails to take reasonable measures to maintain required devices. It would be irresponsible for the Coast Guard to allow continued inadequate marking of bridges and continued accidents for this reason. Most of the additional marking required by these rules will require minimum maintenance. Racons will only be required on those few bridges where installation of these devices will be a clear benefit. As discussed more fully below, even racons have a high degree of reliability when properly installed.

One comment suggested an appeal from the decision of the District Commander concerning the markings or signals required. This suggestion has not been adopted. The District Commander is in the best position to determine the needs of navigation and the cost of even the most expensive equipment does not justify an administrative appeal. The District Commander's decision is final agency action.

One comment suggested that lateral red and green lighting would tend to create confusion if used to mark a main channel span where red pier lights were in use. Section 118.110 has been changed to provide for the marking of adjacent piers with fixed yellow lights in those instances. This provision conforms to the U.S. Aids to Navigation System.

One comment stated that electronic depth gauges should be required to provide real time vertical clearances. This suggestion was not adopted because electronic depth gauges for use as bridge clearance gauges are relatively new. The Coast Guard has no information on their reliability, cost, and accuracy. Furthermore, information from nautical charts and other publications, as well as visual gauges giving vertical clearances of bridges is more than adequate for the needs of navigation.

Many of the comments objecting to costs were by states or railroad companies owning numerous bridges and indicated an expectation that the owners would be required to install many, if not all, of the various signals upon the effective date of the rule. However, as noted in one comment, the signals are required only on a case-by-case, site-specific basis in response to the particular navigational problems presented by the bridge. Because of the site-specific intent of the regulations, we do not expect significant numbers of immediate changes to be required. In the event that new signal equipment was recently installed, the Coast Guard would consider this factor in determining the need for replacement.

A number of comments raised specific questions concerning the effectiveness of retroreflective material. Retroreflective material has been in common use on bridges, aids to navigation structures, and buoys over a number of years and has proven effective.

Several comments asked what color specifications for lights under § 118.60 are required. Though no color specifications are prescribed, § 118.60 has been changed to recommend the use of the chromaticity standards for vessel navigation lights in Annex I, Appendix A of 33 CFR Part 81.

A number of comments suggested that flashing lights be required in § 118.65 instead of fixed lights. The Coast Guard considers the use of flashing lights as more appropriately limited to those instances where they conform to the standard aids to navigation system and have lateral significance; particularly as they relate to the location of the main navigation channel through a bridge. Under § 118.110, the District Commander may require the use of flashing lights in appropriate cases.

A number of comments raised specific questions concerning the reliability of racons under § 118.120. Very few racons are in use or are anticipated to be used on bridges. Because of their solid state construction, racons are considered to be maintenance free for three to five years, if operated within the design standards and installed with anti-vibration mounting properly matched to the intended environment.

A number of comments raised specific questions concerning cost of reflective material and other signals. The economic impact of these rules is discussed in the following Regulatory Evaluation section.

As a result of the comments received, several minor changes were made to the information in Appendix A of Part 117 to correct erroneous locations, names, spellings, call signs, and VHF channels of the listed bridges. In addition, editorial changes have been made in §§ 117.24(b)(2), 118.100(c), and 118.116(d) to clarify the rules.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51:

Standard Alphabets for Highway Signs, Federal Highway Administration (FHWA), 1966. (Reprinted April 1984.)

Copies of the material incorporated by reference may be obtained from the sources indicated in § 118.3(c).

If substantive changes are made to the material incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Evaluation

These rules are considered to be nonmajor under Executive Order 12291 and nonsignificant under the Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The economic impact of this rule has been found to be so minimal that a full regulatory evaluation in unnecessary.

These rules would not automatically require all bridges to have all of the various devices considered. Only when the District Commander determines on a case-by-case basis that a particular bridge needs one or more of the devices for reasons of safe navigation would the device or devices be required. In the event the bridge owner voluntarily chooses to comply with one or more of these rules, the owner would still have to receive the District Commander's approval in order to determine whether the measures taken will improve safety of navigation and conform to the regulations.

Because any requirement for installation is on a case-by-case basis and because many bridge owners would prefer to comply with one or more rules even though not required to, it is not known how many bridges would be required to install any of this equipment.

Retroflective material costs less than $10 a square foot, the maximum size required. The cost for painting, day boards, lateral lighting, radar reflectors, traveller lighting, and fog signals range in cost from $100 to $4,000 depending on which are required. The Coast Guard anticipates that the most costly device, racons at $15,000 a unit, would be needed only on large bridges crossing busy waterways. These large bridges, the type owned by railroads and governmental bodies, could, therefore, require up to a $19,000 outlay, though this cost would be exceptional.

We do not have data to estimate accurately the total number of bridges affected. However, that number is unlikely to exceed five or six major bridges and 40 to 50 minor bridges annually for a total cost of less than $224,000 per year. If one accident can be avoided, such as one of the two recent

collisions with the Popular Street Bridge across the Mississippi River at St. Louis, Missouri, which resulted in damages totalling $9,000,000 and $3,000,000 respectively, these improvements would be cost effective.

Therefore, based upon these estimates, the benefits of these rules are anticipated to exceed their costs.

Regulatory Flexibility Act

These rules would apply mostly to major bridges across busy waterways, the type of bridge usually owned by a railroad or local governmental agency. Smaller bridges affected, ones that might be owned by small entities, would number about 40 to 50 a year. At the most, costs for required equipment for the smaller bridges would not exceed $4,000 per bridge and would probably be considerably less. Therefore, for the above reasons, it is certified, in accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164; 5 U.S.C. 601), that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or recordkeeping requirements.

Environmental Assessment

These rules are limited to actions by the Coast Guard to protect public safety by authorizing or requiring the installation of approved warning devices to reduce the likelihood of vessels striking bridges. Therefore, the rules are of the category that would not significantly affect the environment and do not require an Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement (Section 2-B-3-g, COMDTINST M16475.1A).

List of Subjects

33 CFR Part 117

Bridges.

33 CFR Part 118

Bridges, Incorporation by reference.

In consideration of the foregoing, Parts 117 and 118 of Title 33, Code of Federal Regulations, are amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5).

2. By adding a note at the end of paragraph (d)(1) of § 117.15 to read as follows:

§ 117.15 Signals.

* * * * *

(d) * * *

(1) * * *

Note.—Call signs and radio channels for drawbridges with radiotelephones are listed in Appendix A to this part.

* * * * *

3. By adding a new § 117.24 to read as follows:

§ 117.24 Radiotelephone installation identification.

(a) The Coast Guard authorizes, and the District Commander may require the installation of a sign on drawbridges, on the upstream and downstream sides, indicating that the bridge is equipped with and operates a VHF radiotelephone in accordance with § 117.23.

(b) The sign shall give notice of the radiotelephone and its calling and working channels—

(1) In plain language; or

(2) By a sign consisting of the outline of a telephone handset with the long axis placed horizontally and a vertical three-legged lightning slash superimposed over the handset. The slash shall be as long vertically as the handset is wide horizontally and normally not less than 27 inches and no more than 36 inches long. The preferred calling channel should be shown in the lower left quadrant and the preferred working channel should be shown in the lower right quadrant.

Note.—It is recommended that the radiotelephone sign be similar in design to the Service Signs established by the Federal Highway Administration (FHWA) in U.S. Road Symbol Signs using Reflective Blue and Reflective White colors. Color and design information is available from the District Commander of the Coast Guard District in which the bridge is located.

4. By revising paragraph (b) in § 117.47, not including the note, to read as follows:

§ 117.47 Clearance guages.

* * * * *

(b) Except for provisions in this part which specify otherwise for particular drawbridges, clearance guages shall be designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

* * * * *

5. By adding a new Appendix A at the end of Part 117 to read as follows:

Appendix A to Part 117—Drawbridges Equipped with Radiotelephones.

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Alabama						
Alabama River	105.3	Coy	Burlington Northern Railroad	WXY 960	16	13
Black Warrior River	267.8	Eutaw	Southern Railway System	KQ 7158	16	13
Chickasaw Creek	0	Pritchard	Seaboard System RR	KQ 7197	16	13
Mobile River	13.3	Mobile	Seaboard System RR	KQ 7197	16	13
Three Mile Creek	0.3	Mobile	Seaboard System RR	KQ 7197	16	13
Tombigbee River	44.9	Jackson	Southern Railway	KQ 9072	16	13
Tennessee River	259.4	East Florence	Wilson Lock, U.S. Army Engineer District, Nashville.	WUE 612	16	13
	304.4	Decatur	Southern Railway System	KQ 8999	16	13
	305.0	Decatur	Keller Highway Bridge, AL, US-3	KYH 502	16	13
	414.4	Bridgeport	Seaboard System RR	KC 9430	16	13
Arkansas						
Arkansas River	67.4	Rob Roy	St. Louis Southwestern Railroad	KTA 435	16	
	118.2	Little Rock	Chicago, Rock Island and Pacific Railroad.	KSK 392	16	13
	118.7	Little Rock	Junction Bridge—Missouri Pacific RR	KSK 392	16	13
	119.6	Little Rock	Baring Cross—Missouri Pacific RR	KSK 392	16	13
White River	98.9	Clarendon	St. Louis Southwestern Railroad	KUF 653	16	14
	196.3	Clarendon	Missouri Pacific RR	KVY 684	13	13
	254.8	Clarendon	Missouri Pacific RR	KIZ 553	16	13
California						
Carquinez Strait	7.0	Martinez	Southern Pacific RR	KQ 7193	16	13
Cerritos Channel	4.4	Long Beach	Henry Ford (Badger) Avenue, Port of Los Angeles.	KVY 723	13	13
	4.5	Long Beach	Schuyler Heim CA DOT	KXJ 749	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Channel Street	0	San Francisco	3rd Street, San Francisco	KR 4864	16	9
Connection Slough	2.5	Mandeville Island	South Real Estate Company	WHV 225	16	9
Little Potato Slough	1.0	Terminous	Potato Slough, CA DOT, SR12	KSK 278	16	9
Mokelumne River	3.0	Isleton	CA DOT, SR12	KMJ 382	16	9
Napa River	2.8	Vallejo	Mare Island Causeway, Navy	Military license only, No FCC	16	13
Oakland Inner Harbor Tidal Canal	7.3	Oakland	Park Street, Alameda County	WHV 263	16	9
	7.7	Oakland	Fruitvale Avenue, Alameda County	WHV 271	16	9
	8.1	Oakland	High Street, Alameda County	WHV 259	16	9
Sacramento River	12.8	Rio Vista	Rio Vista, CA DOT, SR12	KMJ 384	16	9
	15.7	Isleton	Isleton, CA DOT, SR160	KMJ 383	16	9
	26.7	Walnut Grove	Walnut Grove, Sacto Co., SR E-13	KMJ 491	16	9
	33.4	Paintersville	Paintersville, CA DOT, SR160	KMJ 381	16	9
	46.0	Freeport	Freeport Sacto Co., SR E-9	KMJ 490	16	9
	59.0	Sacramento	Tower Bridge, CA DOT	KDO 739	16	9
	59.4	Sacramento	I Street Southern Pacific RR	WHX 359	16	9
San Leandro Bay	0	Alameda	Bay Farm Island, CA DOT	WHV 267	16	9
Steamboat Slough	11.2	Courtland	Steamboat Slough, CA DOT, SR160	WHX 295	16	9
Three Mile Slough	0.1	Rio Vista	Three Mile Slough, CA DOT, 160	KMJ 385	16	9
Connecticut						
Connecticut	3.4	Old Saybrook	Amtrak	KT 5414	13	13
	16.8	Haddam	Connecticut, SR82	KXR 913	13	13
Housatonic River	3.5	Stratfort	Stratfort Avenue, CT	KXJ 695	13	13
	3.9	Devon	Devon RR	KU 6035	13	13
Mystic River	2.4	Mystic	Amtrak	KJA 842	13	13
	2.8	Mystic	Connecticut, US1	KXR 912	13	13
Niantic River	0	Niantic	Amtrak	KGA 511	13	13
	0.1	Niantic	Connecticut, SR156	KXR 911	13	13
Norwalk River	0	South Norwalk	Connecticut, SR136	KXJ 707	13	13
	0.1	South Norwalk	Conrail	KU 6035	13	13
Pequonnock River	0.3	Bridgeport	Peck RR	KU 6033	13	13
Quinnipiac River	0	New Haven	Connecticut, US1	KXJ 688	13	13
Thames River	3.0	Groton	Amtrak	KT 5473	13	13
Florida						
Bayou Chico	0.3	Pensacola, Barrancas Avenue	FL DOT	WHF 855	16	9
Gulf County Canal	0.1	Port St. Joe	FL DOT	KBA 338	16	13
Gulf Intracoastal WW	119.0	Treasure Island	Treasure Island Causeway	WQZ 367 or KZU 970	16	
Gulf Intracoastal WW	126.0	Indian Rocks Beach	Park Blvd., Pinellas Co	WHV 751	16	13
Gulf Intracoastal WW	132.0	Belleair Beach	Belleair Causeway, Pinellas Co	WHV 752	16	13
Gulf Intracoastal WW	139.0	Bunedin	Dunedin Causeway, Pinellas Co	WHV 750	16	13
Hillsboro Inlet	0.3	Hillsboro	FL DOT		16	13
Intracoastal Waterway	1,050	Deerfield Beach	Hillsboro Blvd., FL DOT			13
	1,055	Pompano Beach	NE 14th St., FL DOT			13
	1,056	Pompano Beach	Atlantic Blvd., FL DOT			13
	1,059	Ft. Lauderdale	Commercial Blvd., FL DOT			13
	1,060.5	Ft. Lauderdale	Oakland Park Blvd., FL DOT			13
	1,062.6	Ft. Lauderdale	Sunrise Blvd			13
	1,064	Ft. Lauderdale	Las Olas Blvd., FL DOT			13
	1,066	Ft. Lauderdale	17th Street, FL DOT			13
	1,069.4	Dania	Dania Bch. Blvd., FL DOT			13
	1,070.5	Hollywood	Sheridan Street, FL DOT			13
	1,072.2	Hollywood	Hollywood Blvd., FL DOT			13
	1,074	Hallandale	Hallandale Blvd., FL DOT		16	13
	1,089.4	Miami	Dodge Island, Port of Miami	KCE 254	16	13
Johns Pass	0.1	St. Petersburg	FL DOT	WQZ 213	16	13
New River	1.4	Ft. Lauderdale	Southeast 3rd Ave., Broward Co.			13
New River	2.3	Ft. Lauderdale	Andrews Ave., Broward Co			13
New River	2.7	Ft. Lauderdale	Marshall Bridge, Broward Co			13
New River, South Fork	0.9	Ft. Lauderdale	Davie Blvd., FL DOT		13	
St. Johns River	24.7	Jacksonville	Main St., FL DOT	WHV 528	16	17
St. Johns River	24.9	Jacksonville	Acosta, FL DOT, SR13	WHV 529	16	17
St. Johns River	24.9	Jacksonville	FEC RR	KXR 936	16	13
St. Johns River	25.4	Jacksonville	Fuller Warren, JTA	WHV 527	16	17
	126.0	Astor	FL DOT	WXY 904	16	13
Georgia						
Savannah River	21.6	Savannah	Houlihan, GA DOT, US17	WHV 879	16	13
Savannah River	60.9	Clyo	Seaboard System RR	WKB 679	16	13
Intracoastal WW	583	Savannah	Thunderbolt, GA DOT	WHH 007	16	13
Intracoastal WW	592.9	Skidaway Island	Skidaway, Chatham Co, US80		16	13
Intracoastal WW	684.3	Brunswick	Jekyll Creek, GA DOT	WHD 794	16	13
Idaho						
Clearwater River	0.6	Lewiston	Camas Prairie RR	KU 9788	16	13
Illinois						
Illinois River	21.6	Hardin	Illinois DOT, SR16	WZQ 8761	16	14
	43.2	Grand Pass	Illinois Central Gulf RR	KLU 797	16	14
	56.0	Florence	Illinois DOT, US36	WZQ 8761	16	14
	61.4	Valley City	Norfolk and Western RR	KTR 857	16	14
	88.8	Beardstown	Burlington Northern RR	KLU 801	16	14
	151.2	Pekin	Chicago and Northwestern RR	KVF 831	16	14
	152.9	Pekin	Illinois DOT, SR9	WZQ 8761	16	14
	160.7	Peoria	Peoria and Pekin Union Railway Co	WQX 651	16	14
	162.3	Peoria	Franklin Street, Illinois DOT	WZQ 8761	16	13
	224.7	La Salle	Illinois DOT, US51	WZQ 8761	16	13
	239.4	Ottawa	Burlington Northern RR	WRD 810	16	14
(Des Plaines River)	285.8	Rockdale	Brandon Road, Illinois DOT	WZQ 8761	16	13
	287.3	Joliet	McDonough Highway, Illinois DOT	WZQ 8761	16	13
	287.6	Joliet	Chicago, Rock Island and Pacific RR	KUF 907	16	14
	288.7	Joliet	Ruby Street, Illinois DOT	WZQ 8761	16	13
Upper Mississippi River	202.7	Alton	Burlington Northern RR	KXS 240	16	13
	481.4	Rock Island	Crescent RR	WUD 715	16	14

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	482.9	Rock Island	Department of the Army	AAF 274	16	14
Iowa						
Mississippi River	364.0	Keokuk	City of Keokuk US136	KLG 365	16	14
	383.9	Fort Madison	Atchison, Topeka and Santa Fe RR	KRS 859	13	13
	403.1	Burlington	Burlington Northern RR	KJC 779	16	13
	518.0	Clinton	Chicago and Northwestern RR	KUF 735	16	13
	535.0	Sabula	Chicago, Milwaukee, St. Paul and Pacific RR.	KEA 997	16	13
	579.9	Dubuque	Illinois Central Gulf RR	KQ 9042	16	14
Missouri River	618.3	Council Bluffs	Illinois Central Gulf RR	KD 2670	16	13
Kansas						
Missouri River	396.7	Leavenworth	Chicago and Northwestern RR	KTA 436	16	14
	422.5	Atchison	Missouri Pacific RR	KTD 426	16	14
Kentucky						
Green River	8.3	Spottsville	Seaboard System RR	KT 4181	16	13
Ohio River	604.4	Louisville	Conrail	KUZ 381	13	13
	606.8	Louisville	27th St., McAlpine Lock, Louisville Gas and Electric Co.	WUE 241	16	14
	606.8	Louisville	27th St., McAlpine Lock (Bascule), U.S. Army Engineer District, Louisville.	WUE 241	16	14
Louisiana						
Algiers Canal (GIWW Alternate Route)	1.8	New Orleans	State Highway 407, Louisiana	WDT 574		13
	3.8	Belle Chasse	Judge Perez Bridge Louisiana SR23	WDT 572		13
Atchafalaya River	17.5	Morgan City	Southern Pacific RR	KW 4440		13
	95.7	Krotz Spring	Missouri Pacific RR	KUF 702		13
	107.4	Melville	Missouri Pacific RR	KUF 701		13
Bayou Grosse Tete (GIWW-Port Allen Alternate Route).	0.8	Indian Village	Louisiana, SR77	KTD 559		13
GIWW (Larose-Bourg Cutoff)	35.6	Larose	Louisiana, SR1	KTD 550		13
GIWW (Bayou Blue Pontoon	49.8	Bourg	Louisiana, SR316	KJA 544		13
GIWW	57.6	Houma	East Park, LA, Main Street	KTD 557		13
GIWW	59.9	Houma	Bayou du Large Bridge Louisiana, SR315.	KTD 548		13
GIWW	134.0	Cypremont	Louisiana, SR319	KTD 551		13
GIWW	231.4	Grand Lake Ridge	Louisiana	KJA 560		13
GIWW	237.5	Moss Lake	Black Bayou Pontoon, Louisiana	WXY 918		13
GIWW	243.6	Hackberry	Ellender Ferry, Louisiana, SR27	KTD 558		13
Harvey Canal	2.8	Harvey	Lapalco Boulevard, Jefferson Parish Council.	DTR 859	16	13
Houma Navigation Canal	36.0	Houma	Louisiana, SR661	WDT 573		13
Inner Harbor Navigation Canal	0.5	New Orleans	ST. Claude Bridge, Port of New Orleans.	WG 401	16	13
	1.7	New Orleans	Florida Avenue Bridge, Port of New Orleans.	WUG 409	16	13
	2.9	New Orleans	Old Gentilly Road, Port of New Orleans	KZV 719	16	13
	3.1	New Orleans	Danziger Bridge, LA, US90	KRS 864		13
	4.5	New Orleans	Seabrook, Port of	WDF 838	16	13
	4.6	New Orleans	Seabrook, New Orleans Levee Board	KZV 819	16	13
Lake Pontchartrain	0.6	Slidell	Highway 11—North Draw	KMC 226		13
Ouachita—Black Waterway	40.9	Jonesville	Louisiana, US84	KJA 538	16	13
	57.5	Harrisonburg	Louisiana, SR8	KJA 575	16	13
	110.2	Columbia	Louisiana, US165	KJA 566	16	13
	114.4	Riverton	Missouri Pacific RR	KCE 334	16	6
	191.8	Sterlington	Louisiana	WXZ 3279	16	13
Pass Manchac	6.7	Pass Manchac	Illinois Central Gulf RR	KC 9501	16	13
Port Allen Canal	56.0	Morley	Missouri Pacific RR	KVY 656		13
	64.0	Port Allen	Missouri Pacific RR	KVY 657		13
Rigolets Pass	0	Dunbar	Family Lines Rail System	KQ 7197	16	13
	6.2	Fort Pike	Louisiana, US90	KYZ 723		13
West Pearl River	7.9	Indian Village	Louisiana, US90	KTD 552	16	13
Maryland						
Cambridge Creek	0.5	Cambridge	Maryland, SR343	KZA 695	16	13, 68
Choptank River	15.6	Cambridge	Maryland, US50	KYQ 894	16	13, 68
Fishing Creek	0	Hooper Island	Maryland, US335	KYU 695	16	13, 68
Kent Island Narrows	0.5	Grasonville	Maryland, SR50/301	KXE 254	16	13, 68
Knapps Narrows	0	Tilghman Island	Maryland, SR33	KZA 668	16	13, 68
Nanticoke River	22.0	Vienna	Maryland, US50	KYQ 895	16	13, 68
	28.0	Sharptown	Maryland, SR348	KYQ 896	16	913, 68
Sassafras River	9.0	Georgetown	Maryland, SR213	KYU 699	16	13, 68
Severn River	1.5	Annapolis	Maryland, SR450	KZA 872	16	13, 68
Isle of Wight Bay	1.0	Ocean City	Maryland	KYU 698	16	13, 68
Spa Creek	0.5	Annapolis	Maryland, SR181	KZA 871	16	13, 68
Stoney Creek	1.0	Riveria Beach	Maryland, SR173	KAJ 667	16	13, 68
Wicomico River, North Prong	22.4	Salisbury	Main St., MD	KZA 869	16	13, 68
	22.5	Salisbury	Route 50, MD	KYU 697	16	13, 68
Maine						
Portland Harbor (Fore River)	1.5	Portland	Ocean Avenue DOT ME	KQU 653	16	13
Massachusetts						
Acushnet River	0	New Bedford	MA DPW, US6	WHH 238	16	13
Annisquam River	2.5	Blynman Canal	MA DPW, SR127	WQA 834	16	13
	3.8	Gloucester	Boston & Maine RR		18	18
Chelsea River	0.3	Boston	McArdle Bridge, Boston		16	13
	1.2	Boston	Chelsea St., Boston		16	13
Danvers River	0	Salem-Beverly	MA DPW, SR1A		16	6
	0	Salem-Beverly	MBTA	WRD 626	16	6
	1.0	Salem-Beverly	Kernwood Avenue Bridge, MA DPW	WRD 625	16	6
Merrimack River	3.4	Newburyport	MA DPW, US1	WQA 806	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Taunton River	1.8	Fall River	Brightman Street Bridge, MA DPW	WQA 633	16	13
Weymouth-Fore River	3.5	Quincy	MA DPW, SR3A	WRD 634	16	13
Michigan						
Rouge River	0.40	Detroit	National Steel Corp	KUZ 371	16	12
	1.48	Detroit	Conrail		16	12
Minnesota						
Mississippi River	813.7	Hastings	Chicago, Milwaukee, St. Paul and Pacific RR.	KTD 538	16	14
	835.7	Newport	Chicago and Northwestern RR	KUZ 544	16	14
	839.2	St. Paul	Chicago and Northwestern RR	KUZ 546	16	14
	841.4	Omaha	Chicago and Northwestern RR	KUZ 545	16	14
Duluth-Superior Harbor, MN-WI	0.25	Duluth	Minnesota Avenue, Duluth	KAN 388	16	13
Mississippi						
Back Bay of Biloxi	8.0	Biloxi	Popps Ferry Road, Harrison County	WXZ 590	16	13
Biloxi Bay	0	Biloxi	Seaboard System RR	KQ 7197	16	13
	0.4	Biloxi	Mississippi, US 90	KUF 720	16	13
Escatawpa River	1.0	Moss Point	Mississippi, SR613	KUF 719	16	13
Pascagoula River	1.5	Pascagoula	Seaboard System RR	KQ 7197	16	13
	1.8	Pascagoula	Mississippi, US90	KUF 722	16	13
St. Louis Bay	1.0	St. Louis	Harrison & Hancock Counties, US90	KUF 721	16	13
Missouri						
Mississippi River	282.1	Louisiana	Illinois Central Gulf RR	KLU 798	16	14
	309.9	Hannibal	Norfolk and Western RR	KUZ 448	16	14
Missouri River	359.4	Kansas City	Harry S. Truman, Chicago, Milwaukee, St. Paul and Pacific RR.	KVY 575	16	13
	365.6	Kansas City	A-S-B, Burlington Northern RR	KQU 500	16	14
	368.1	Hannibal	Burlington Northern RR	KQU 500	16	14
	448.2	St. Joseph	Union Pacific RR	KTD 403	16	14
New Hampshire						
Piscataqua River	3.5	Portsmouth	Memorial Bridge, US1, NH DPW	KBK 472	16	13
	4.0	Portsmouth	US1 Bypass, NH DPW	KAW-766	16	13
New Jersey						
Cheesequake Creek	0.2	Morgan	NJTRO-Morgan Draw	KT 3859	13	13
Delaware River	107.2	Palmyra	Tacona Palmyra Burlington Co	KBA 328	13	13
	117.8	Bristol	Tacona Palmyra Burlington-Bristol	KBA 339	13	13
Great Egg Inlet	0.3	Ocean City	Cape May County	WQZ 343	13	13
Hackensack River	3.0	Jersey City	PATH-Hack Freight	KQ 7196	13	13
	3.1	Jersey City	Hack Freight, Conrail	KQ 7198	13	13
	3.1	Jersey City	Witt-Penn, NJDOT		13	13
	3.4	Jersey City	NJTRO-Laurel Hill (Lower Hack)	KR 6939	13	13
	5.0	Snake Hill	Amtrak-Portal	KMC 297	13	13
	5.4	Snake Hill	NJTRO-DB (Erie Swing)	KR 6972	13	13
	6.9	Secaucus	NJTRO-Erie Lift (Upper Hack)	KR 7035	13	13
	7.7	Secaucus	NJTRO-Jacknife (HX)	KR 7034	13	13
Manasquan River	0.9	Bricktownship	NJTRO-Brielle	KT 4203	13	13
Middle Thorofare	0.2	Strathmere	Cape May County	WQZ 342	13	13
Newark Bay	4.3	Port Newark	Lehigh Valley, Conrail	KS 9968	13	13
Passaic River	2.6	Newark	Point-No-Point Conrail	KR 6938	13	13
	5.0	Newark	Amtrak Dock	WRY 593	13	13
	5.8	Newark	Morristown Line	*Pending*	13	13
	8.0	West Arlington	Erie Lackawanna RR	*Pending*	13	13
	11.7	Lynhurst	Erie Lackawanna RR	*Pending*	13	13
Raritan River	0.5	Perth Amboy	NJTRO	KT 4204	13	13
Shark River	0.1	Belmar	Ocean Avenue Monmouth County	KMD 281	13	13
	0.9	Avon	NJTRO	KT 4202	13	13
	0.9	Avon	New Jersey, SR35	KXR 952	13	13
New York						
Arthur Kill	11.6	Staten Island	S.I. Rapid Transit	KXS 237	13	13
Bronx River	1.1	Bronx	Bruckner Expressway	KX 8189	13	13
East River	6.4	Roosevelt Island	New York City (36 Avenue)	KX 8184	13	13
Flushing Creek	0.4	Flushing	Northern Blvd	KX 8192	13	13
Gowanus Canal	1.2	Brooklyn	Hamilton Avenue, New York City	KX 8183	13	13
	1.4	Brooklyn	Ninth Street, New York City	KX 8186	13	13
Harlem River	0	New York City	103rd Street, New York City	KIL 820	13	13
	1.3	New York City	Triboro Bridge and Tunnel	KGW 326	13	13
	2.1	New York City	Park Avenue, Amtrak Authority	KA 5059	13	13
	7.9	New York City	Spuyten Duvvil, Conrail	KU 9797	13	13
Hutchinson River	0.4	New York City	Pelham Parkway, New York City	KU 9758	13	13
	0.5	New York City	Amtrak-Pelham Bay, New York City	KU 6095	13	13
	2.2	Eastchester	New England Thruway, I95	KXS 298	13	13
Jamaica Bay	3.0	Rockway Inlet	Marine Parkway, New York City	KIL 819	13	13
Mill Basin	0.8	New York City	Mill Basin, New York City	KX 8185	13	13
Newtown Creek	0.6	New York City	Pulaski	KX 8178	13	13
	1.3	New York City	Greenpoint Avenue, New York City	KX 8182	13	13
	3.4	New York City	Metropolitan Avenue	KX 8179	13	13
Niagara River—Black Rock Canal	2.6	Buffalo	Ferry Street, Buffalo City	WHV 559	16	12
Reynolds Channel	0.4	Atlantic Beach	Nassau County	KFL 348	13	13
Westchester Creek	1.7	Unionport	Bruckner Expressway	KX 8289	13	13
North Carolina						
Albemarle Sound	47.7	Edenton	NCDOT, SR32	KU 6047	16	13
Cape Fear River	26.8	Wilmington	NCDOT, US17	KQU 609	16	13
Intracoastal WW	84.2	Columbia	NCDOT, US64	KU 9448	16	13
	206.7	Atlantic Beach	NCDOT, SR58	KU 6064	16	13
	260.7	Sears Landing	NCDOT, SR50	KU 6044	16	13
	283.1	Wrightsville Beach	NCDOT, US74	KU 6043	16	13
	323.7	Holden Beach	NCDOT, SR130	KU 6042	16	13

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
	333.7	Ocean Isles	NCDOT, SR904	KJ 6050	16	13
	337.9	Sunset Beach	NCDOT	KU 6040	16	13
Northeast Cape Fear River	0.5	Wilmington	NCDOT, US17	KU 6041	16	13
Ohio						
Cuyahoga River	0.8	Cleveland	Conrail	KUF 618	16	13
Oregon						
Coos Bay	9.0	North Bend	Southern Pacific RR	KT 2006	18A	13
Willamette River	6.9	St. Johns	Burlington Northern RR	KQ 9050	16	13
	11.7	Portland	Broadway Multnomah Co	KUU 724	16	13
	12.1	Portland	Steel Union Pacific RR	KQU 534	16	13
	12.4	Portland	Burnside Multnomah Co	KTD 520	16	13
	12.8	Portland	Morrison, Multnomah Co	KTD 522	16	13
	13.1	Portland	Hawthorne Multnomah Co	KTD 521	16	13
Youngs Bay	0.7	Astoria	OR DOT, US26	WHG 914	16	13
Pennsylvania						
Delaware River	104.8	Philadelphia	Delair, Conrail	KS 9970	13	13
	107.2	Tacony	Tacony Palmyra Burlington Co	KBA 328	13	13
	117.8	Bristol	Burlington-Bristol	KBA 339	13	13
Schuylkill River	5.1	Philadelphia	Tasker Street, B&O Railroad	KXS 238	13	13
South Carolina						
Intracoastal WW	347.3	Myrtle Beach Little River	SC, US17	KT 5433	16	13
	371.0	Socastee	SC, SR544	KT 5438	16	13
	462.2	Sullivans Island	Ben Sawyer, SC, SR703	KT 5438	16	13
	470.8	Charleston	Wappoo Creek, SC, SR171	KT 5438	16	13
	536.0	Beaufort	Lady's Island, SC, US21	KT 5439	16	13
Savannah River	21.6	Savannah	Houlihan, GA DOT	WHV 879	16	13
Savannah River	60.9	Clyo	Seaboard System RR	WKB 679	16	13
Tennessee						
Cumberland River	126.5	Clarksville	Seaboard System RR	KF 2204	16	13
	185.2	Bordeau	Illinois Central Gulf RR (Nashville and Ashland City Railroad (Lessee)).	KX 6366	16	13
	190.4	Nashville	Seaboard System RR	KQ 7197	16	13
Tennessee River	100.5	New Johnsonville	Seaboard System RR	KC 9465	16	13
Texas						
Clear Creek	1.0	Kemah	Texas, SR146	KXS 361	16	13
Gulf Intracoastal WW (Pelican Island Causeway)	356.1	Galveston	Galveston County Navigation District	KYH 532	16	13
Galveston Causeway RR	357.2	Galveston	Southern Pacific RR	KUF 652	16	13
Gulf Intracoastal WW	397.6	Freeport	Texas, SR1495	KQU 648	16	13
Caney Creek Bridge	418.0	Sargent	Texas, FR457	KQU 644	16	13
Gulf Intracoastal WW	440.7	Matagorda	Texas, FR2031	KQU 645	16	13
San Bernard River	20.7	Brazo Ria	MOPAC RR	KI 2524		12
Virginia						
James River	5.0	Isle of Wight County	Virginia, US17	KQ 7169	13	13
Potomac River	65.0	Prince George County	Virginia, SR156	KQ 7167	13	13
York River	6.0	York County	Virginia, US17	KQ 7166	13	13
Pamunkey River	1.0	King William County	Virginia, SR33	KQ 7168	13	13
Washington						
Blair Waterway	0.3	Tacoma	WA DOT, 11th Street	KZN 573	16	13
Chehalis River	0.1	Aberdeen	WA DOT, US101	KJA 289	16	13
Columbia River	105.6	Vancouver/Portland	Burlington Northern RR	KQ 9049	16	13
	106.5	Vancouver/Portland	OR DOT, 15	KBM Interstate	16	13
	169.8	Hood River, OR	Port of Hood River	KTD 562	16	13
	201.2	Celilo, OR	Burlington Northern RR	KQ 9048	16	13
	323.4	Pasco/Kennewick	Union Pacific RR	KTD 561	16	13
	328.0	Pasco/Kennewick	Burlington Northern RR	KQ 9046	16	13
Duwamish Waterway	0.4	Seattle	Spokane St., City of Seattle	KSK 285	13	13
	2.5	Seattle	1st Ave. So. City of Seattle	WHU 200	13	13
Ebey Slough	1.6	Marysville	WA DOT, US529	KZ 2475	13	13
Hood Canal		Port Gamble	WA DOT, Hood Canal Bride	KZJ 376	16	13
Hylebos Waterway	1.1	Tacoma	WA DOT, 11th Street	KZN 574	16	13
Lake Washington Ship Canal	0.1	Seattle	Burlington Northern RR	KCE 201	16	13
	1.1	Seattle	Ballard, City of Seattle	KJA 445	13	13
	2.6	Seattle	Fremont, City of Seattle	KJA 442	13	13
	4.3	Seattle	University, City of Seattle	KJA 441	13	13
	5.2	Seattle	Montlake, City of Seattle	KJA 438	13	13
Snake River	1.5	East Pasco/Burbank	Burlington Northern RR	KQ 9047	16	13
Wisconsin						
Mississippi River	699.8	LaCrosse	Chicago, Milwaukee, St. Paul and Pacific RR.	KVY 631	16	13
St. Croix River	0.2	Prescott	Burlington Northern, Inc	KJC 782	16	14
	0.3	Prescott	Wisconsin and Minnesota	KD 2829	7	14
	17.3	Hudson	Chicago and Northwestern RR	KUZ 549	16	14

[1] Effective April 15, 1983, all state-owned highway drawbridges in Louisiana need not monitor channel 16 (Emergency Channel).

6. By revising the title of Part 118 to read as follows:

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

7. The authority citation for Part 118 is revised to read as follows and all section authority citations are removed:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; 49 CFR 1.46 (b) and (c).

8. By revising § 118.1 to read as follows:

§ 118.1 General requirements.

All persons owning or operating bridges over the navigable waters of the United States or any international bridge constructed after March 23, 1906, shall maintain at their own expense the

lights and other signals required by this part.

9. By adding a new § 118.3 to read as follows:

§ 118.3 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408 and at U.S. Coast Guard, Room 1410, 2100 Second Street, SW., Washington, D.C. 20593. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

Federal Highway Administration (FHWA), 400 Seventh Street, SW., Washington, D.C. 20590

Standard Alphabets for Highways Signs, 1966. (Reprinted April 1984).

10. By revising § 118.40 to read as follows:

§ 118.40 Modification of requirements.

(a) The District Commander may modify the requirements for the display of lights and other signals on any bridge when a change in local conditions warrants the modification.

(b) The District Commander may exempt bridges over waterways with no significant nighttime navigation from the lighting or other signal requirements in this part.

(c) The District Commander may prescribe special lighting or other signals in specific cases when the lighting or other signals in this part may not provide adequately for the safe passage of vessels.

(d) While a bridge is under construction, the District Commander prescribes the temporary lights and other signals to be displayed for the protection of navigation.

11. By revising § 118.50 to read as follows:

§ 118.50 Inspection.

Lights and other signals required or authorized under this part are subject to inspection at any time by Coast Guard personnel or authorized agents.

12. By revising § 118.60 to read as follows:

§ 118.60 Characteristics of lights.

All lights required or authorized under this part must be securely attached to the structure and of sufficient candlepower as to be visible against the background lighting at a distance of at least 2,000 yards 90 percent of the nights of the year. Lights must meet the requirements of this part. Lights shall be fixed lights excepting as provided in §§118.95. 118.110 and 118.150 of this part. Color specifications are not prescribed for bridge lights, however, the chromaticity standards for navigation lights in Annex I, Appendix A of 33 CFR Part 81 are recommended.

13. By revising § 118.95 to read as follows:

§ 118.95 Lights on structures not part of a bridge or approach structure.

Lights on sheer booms, isolated piers, obstructions, and other structures not part of a bridge or approach structure must meet the requirements for aids to navigation in Subpart 66.01 of Part 66 of this chapter.

14. By revising § 118.100 to read as follows:

§ 118.100 Retroreflective panels on bridge piers.

The District Commander may require or authorize the display of high intensity red or green retroreflective panels when the District Commander finds it necessary:

(a) To better identify a hazardous pier.

(b) To provide a backup for red pier lights, red channel margin lights, and green mid channel lights, which are subject to vandalism or otherwise difficult to properly maintain. If the District Commander determines that the nominal nighttime visibility required is less than one-half mile, the panels must be at least six inches square. If the visibility required is more than one-half mile, the panels must be at least 12 inches square.

(c) To mark bridge piers or channel sides on bridges not required to have bridge lighting. Lateral significant red triangles and green square retroreflective panels shall be used. The panels shall be at least 36 square inches in area to provide a nominal nighttime visibility distance of at least one-half mile.

§ 118.105 [Removed]

15. By removing § 118.105, Bridges infrequently used and unusual cases.

16. By adding new §§ 118.110, 118.120, 118.130, 118.140, 118.150 and 118.160 to read as follows:

§ 118.110 Daymarks and lateral lighting on bridges.

(a) The District Commander may require or authorize the marking of the margins of navigation channels through bridges with U.S. aids to navigation system lateral marks and lights installed on the superstructure or on the channel piers. The District Commander may also require or authorize the use of quick flashing, flashing, isophase or occulting red and green lights to mark the main channels.

(b) If lateral system lights are required or authorized to mark the main navigation channels, fixed yellow lights shall be used to mark the adjacent piers and the centerline of the channel shall be marked with the standard lateral system safe water mark and occulting white light, instead of the lights prescribed in § 118.65.

(c) The District Commander may require or authorize the marking of the centerline of the navigation channel drawspan of floating drawbridges with a special mark, diamond in shape, yellow in color, and with a high intensity retroreflective material border. The District Commander may require or authorize the mark to exhibit a flashing yellow light Morse Code "B" characteristic. The mark may not be visible when the drawspan is in the open position.

§ 118.120 Radar reflectors and racons.

The District Commander may require or authorize the installation of radar reflectors and racons on bridge structures, stakes, or buoys. Radar reflectors are used to mark the location of the edge of the navigation channel or bridge channel piers. Racons are used to mark the centerline of the channel.

§ 118.130 Fog signals.

On waterways where visibility is frequently reduced due to fog or other

causes, the District Commander may require or authorize the installation of one or more fog signals to warn the navigator of the presence of the bridge. The fog signals must conform to the installation, range, and sound frequencies provisions in Subpart 67.10 of Part 67 of this chapter. If more than one fog signal is installed on a bridge or in the vicinity, their characteristics must be different to distinguish each signal. The fog signals must be directional to the fullest extent possible to minimize adverse impact on local residents.

§ 118.140 Painting bridge piers.

The District Commander may require painting the sides of bridge channel piers below the superstructure facing traffic white or yellow when they are significantly darkened by weathering or other causes so as to be poorly visible against a dark background.

§ 118.150 Traveller platforms.

The District Commander may require under deck traveller platforms which may significantly reduce the vertical clearance when operated over navigation channels at night to be lighted with quick flashing red lights on each of the four lower corners.

§ 118.160 Vertical clearance gauges.

(a) When necessary for reasons of safety of navigation, the District Commander may require or authorize the installation of clearance gauges. Except as specified in §117.47(b) of this chapter for certain drawbridges, clearance gauges must meet the requirements of this section.

(b) Clearance gauges must indicate the vertical distance between "low steel" of the bridge channel span and the level of the water, measured to the bottom of the foot marks, read from top to bottom. Each gauge must be installed on the end of the right channel pier or pier protection structure facing approaching vessels and extend to a reasonable height above high water so as to be meaningful to the viewer. Other or additional locations may be prescribed by the District Commander if particular conditions or circumstances warrant.

(c) *Construction.* Each gauge must be premanently fixed to the bridge pier or pier protection structure and made of a durable material of sufficient strength to provide resistence to weather, tide, and current. Gauges may be painted directly on the bridge channel pier or pier protection structure if the surface is suitable and has sufficient width to accommodate the foot marks (graduations) and numerals.

(d) *Numerals.* (1) Each gauge must be marked by black numerals and foot marks on a white background. Paint, if used, must be of good exterior quality, resistant to excessive chalking or bleeding. Manufactured numerals and background material may be used.

(2) The size, type, and spacing of numerals must conform to the Standard Alphabets for Highway Signs and the following table. The nominal day visibility distance is the distance at which the clearance information needs to be ascertained by approaching vessel operators. The District Commander determines this distance for each bridge.

Nominal day visibility distance (feet)	Height of numeral (inches)	Type of numeral	Vertical spacing of numerals (feet)
Less than 500	12	Series C	2
500 to 750	18	Series C	2
750 to 1,000	24	Series D	5
1,000 to 2,000	30	Series E	5
More than 2,000	36	Series E	10

(3) The length of the foot marks must be no less than the width of a single numeral used (except numerals 1 and 4), be the same thickness as the width of stroke of the numeral, and extend to the nearest margin of the white background. Foot marks must be spaced every foot for nominal day visibility of less than 500 feet, every two feet for a nominal day visibility of more than 500 feet but less than 1,000 feet, and every five feet for nominal day visibility of more than 1,000 feet.

(4) Intermediate foot marks may be used when more precise determination of actual clearance is necessary. Such intermediate foot marks must have a width of stroke one-half the width of the stroke required for the numeral and shall be three-quarters as long as the primary foot marks.

(5) The horizontal distance between the numeral and nearest edge of the white background shall be no less than one-half the width of a single numeral (excepting numerals 1 and 4).

(6) The minimum width of the white background shall be no less than three times the width of a single numeral (excepting numerals 1 and 4) plus the widths of each additional numeral (when multiple numerals are used plus numeral spacing).

(e) *Maintenance.* The owner or operator of the bridge shall maintain each gauge in good repair and legible condition. The bridge owner or operator is responsible for the accuracy of the gauge and shall remeasure the vertical distance of the numerals and foot marks below "low steel" of the bridge whenever the gauge is repainted or the structure is repaired.

Dated: April 14, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86-8653 Filed 5-1-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Adjustments in the G.I. Bill Resulting From the Veterans' Educational Assistance Act of 1984

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations implement provisions of the Veteran's Educational Assistance Act of 1984 which affect people eligible to receive benefits under the dependents' educational assistance program or the G.I. Bill. Some regulations which deal primarily with the G.I. Bill are amended to show that they also apply to the new educational program for members of the Armed Forces or to the new educational program for members of the Selected Reserve, or both. These regulations will acquaint the public with the way in which the VA (Veterans Administration) will implement these provisions of law.

EFFECTIVE DATES: The amendment to 38 CFR 21.4005(c) is effective April 14, 1986. In keeping with the Veterans' Educational Assistance Act of 1984, the rest of the regulations are effective October 19, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 47066 through 47068 of the Federal Register of November 14, 1985, it was proposed to amend 38 CFR Part 21 to make it consistent with the Veterans' Educational Assistance Act of 1984. Interested people were given 28 days to submit comments, suggestions or objections.

The VA received one letter from an educational organization. The letter writer commented that he had no problem with the proposal. Accordingly, the VA is making the proposal final without change.

The VA is making these regulations retroactively effective on October 19, 1984. Retroactive effect is justified for

the following reasons. Most of these regulations are restrictive. A few are liberalizing. They either repeat portions of Public Law 98–525 or construe the meaning of some of the provisions of that law.

The VA finds that good cause exists for making these regulations, like the sections of the statute they implement, retroactively effective on October 19, 1984. This legislation's restrictions are intended to prevent some people from receiving benefits under more than one of the various educational programs the VA administers. Consequently, a delayed effective date for these regulations would be contrary to statutory design; would complicate administration of several provisions of the law; and might result in some people receiving benefits to which they would not be entitled.

The VA has determined that these regulations are not major rules as that term is defined by E.O. 12291, entitled, Federal Regulation. The regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that the regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because most of these changes affect only individual benefit recipients. The impact from those that do not affect individuals will result from the underlying law. It will not result from the regulations themselves.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs-education, loan programs-education, reporting and recordkeeping requirements, schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 14, 1986.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. Section 21.1022 is amended by adding a new paragraph (b)(6) and a new paragraph (c) to read as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

* * * * *

(b) * * *

* * * * *

(6) 10 U.S.C. ch. 106.

(38 U.S.C. 1781; Pub. L. 98–223, Pub. L. 98–525)

(c) *Chapters 30 and 34.* A veteran who is eligible for educational assistance under chapters 30 and 34 may not receive assistance under both programs concurrently, but must elect which benefit he or she will receive. (38 U.S.C. 1433; Pub. L. 98–525)

2. Section 21.3022 is revised to read as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

(a) *Chapter 35 and most other programs administered by the VA.* A person who is eligible for educational assistance under 38 U.S.C. ch. 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph, must elect which benefit he or she will receive for each program of education that person will pursue. The election is subject to the conditions specified in § 21.4022. The provisions of law are:

(1) 38 U.S.C. ch. 31,

(2) 38 U.S.C. ch. 32,

(3) 38 U.S.C. ch. 34,

(4) 10 U.S.C. ch. 106,

(5) 10 U.S.C. ch. 107,

(6) Section 903 of the Department of Defense Authorization Act of 1981, or

(7) The Hostage Relief Act of 1980.

(38 U.S.C. 1781; Pub. L. 98–223, Pub. L. 525)

(b) *Chapters 30 and 35.* An individual who is eligible for educational assistance under chapters 30 and 35 may not receive assistance under both programs concurrently, but must elect which benefit he or she will receive. (38 U.S.C. 1433; Pub. L. 98–525)

3. In § 21.4005, paragraphs (a)(1) and (2); (b)(1)(ii) (*d*) and (*e*); (b)(2)(ii)(*a*) and (c)(1) and (2) are revised to read as follows:

§ 21.4005 Conflicting interests.

(a) *General.* (1) An officer or employee of the VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36. (10 U.S.C. 2136(b), 38 U.S.C. 1434(a), 1641, 1783(a); Pub. L. 98–525)

(2) The VA will discontinue payments under § 21.4153 to a State approving agency when the Administrator finds that any person who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36 unless that agency takes, without delay such steps as may be necessary to terminate the employment of such a person. The VA will not resume payments while such a person is an officer or employee of [delete]

(i) The State approving agency, or

(ii) State Department of Veterans' Affairs, or

(iii) State Department of Education.

(10 U.S.C. 2136(b), 38 U.S.C. 1434(a), 1641, 1783(b); Pub. L. 98–525)

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*d*) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36.

(*e*) His or her position is not connected with the processing of claims by, or payments to, schools, or their students enrolled under the provisions of 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36.

(10 U.S.C. 2136(b), 38 U.S.C. 1434(a), 1641, 1783(b); Pub. L. 98–525)

* * * * *

(2) * * *

(ii) * * *

(*a*) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36. (10 U.S.C.

2136(b), 38 U.S.C. 1434(a), 1641, 1783(b); Pub. L. 98–525)

* * * * *

(c) * * *

(1) Authority is delegated to the Director, Education Service, and to the field station head in the cases of VA employees under his or her jurisdiction, to waive the application of paragraph (a)(1) of this section in the case of any VA employee who meets the criteria of paragraph (b)(1) of this section, and to deny request for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Administrator for a decision.

(2) Authority is delegated to the Director, Education Service, in cases of State approving agency employees to waive the application of paragraph (a)(2) of this section in the case of anyone who meets the criteria of paragraph (b)(2) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Administrator for a decision.

(38 U.S.C. 212(a))

* * * * *

4. In § 21.4009, paragraph (c) is revised to read as follows:

§ 21.4009 Overpayments—waiver or recovery.

* * * * *

(c) *Committee on school liability.* Each field station having jurisdiction over schools with courses approved for training under chapter 106, title 10, United States Code, chs. 30, 32, 34, 35 and/or 36, title 38, United States Code shall establish a Committee on School Liability. The committee or a panel designated by the committee chairperson and drawn from the committee, is authorized to find whether a school is liable for an overpayment.

(10 U.S.C. 2136(b), 38 U.S.C. 1434(a), 1641, 1785; Pub. L. 98–525)

* * * * *

5. In § 21.4020, paragraphs (a) (4) through (7) are revised to read as follows:

§ 21.4020 Two or more programs.

(a) * * *

(4) 38 U.S.C. chs. 30, 32, 34, 35 and 36 and the former ch. 33;

(5) 10 U.S.C. chs. 106 and 107;

(6) Section 903 of the Department of Defense Authorization Act, 1981; and

(7) The Hostage Relief Act of 1980.

(38 U.S.C. 1795(a); Pub. L. 90–631, Pub. L. 92–540, Pub. L. 96–466, Pub. L. 98–223, Pub. L. 98–525)

* * * * *

6. In § 21.4022, paragraph (a) is revised to read as follows:

§ 21.4022 Nonduplication—programs administered by the VA.

(a) *Election.* (1) A veteran or eligible person who is eligible for education or training under more than one of the provisions of law listed in this subparagraph based on his or her own service or based on the service of another person must elect which benefit he or she will receive for each program of education he or she wishes to pursue. Except for an election between 38 U.S.C. chs. 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time. The provisions of law are:

(i) 38 U.S.C. ch. 31,

(ii) 38 U.S.C. ch. 32,

(iii) 38 U.S.C. ch. 34,

(iv) 38 U.S.C. ch. 35,

(v) 10 U.S.C. ch. 106,

(vi) 10 U.S.C. ch. 107,

(vii) Section 903 of the Department of Defense Authorization Act, 1981, or

(viii) The Hostage Relief Act of 1980.

(38 U.S.C. 1781; Pub. L. 98–223, Pub. L. 98–525)

(2) A veteran or eligible person who is eligible for educational assistance under chs. 30 and 34 may not receive assistance under both programs concurrently, but must elect which benefit he or she will receive.

(38 U.S.C. 1433, 1781; Pub. L. 98–233, Pub. L. 98–525)

* * * * *

7. In § 21.4134, paragraphs (b) (1) and (2) and (c)(2) are revised to read as follows:

§ 21.4134 Suspension and discontinuance.

* * * * *

(b) * * *

(1) The program of education or any course in which the veteran or eligible person is enrolled fails to meet any of the requirements of chapter 106 of title 10, United States Code or chapter 30, 32, 34, 35 or 36 of title 38, United States Code, or

(2) The educational institution offering the veteran's or eligible person's course has violated or failed to meet any of the requirements of chapter 106 of title 10, United States Code or chapter 30, 32, 34, 35 or 36 of title 38, United States Code, and

(38 U.S.C. 1790(b); Pub. L. 98–525)

* * * * *

(c) * * *

(2) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of chapter 106 of title 10, United States Code or chapter 30, 32, 34, 35 or 36 of title 38, United States Code.

(10 U.S.C. 2136, 38 U.S.C. 1434, 1790(b); Pub. L. 97–306, Pub. L. 98–525)

* * * * *

8. In § 21.4153, paragraph (c)(4)(i) is revised to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) * * *

(4) * * *

(i) The work has a direct relationship to the requirements of chapter 106 of title 10, United States Code or chapter 30, 32, 34, 35 or 36 of title 38, United States Code, and (10 U.S.C. 2136, 38 U.S.C. 1434, 1774; Pub. L. 98–525)

* * * * *

9. In § 21.4201, paragraphs (c)(4) introductory text, (e)(2) introductory paragraph, (f)(1)(ii) and (g)(2) introductory paragraph are revised to read as follows:

§ 21.4201 Restrictions on enrollment—percentage of students receiving financial support.

* * * * *

(c) * * *

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans and eligible persons receiving assistances under chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). However, the provisions of paragraph (a) of this section will apply to such a course when—

(38 U.S.C. 1673(d); Pub. L. 98–525)

* * * * *

(e) * * *

(2) Assigning students to each part of the ratio. Notwithstanding the provisions of paragraph (a) of this section, the following students will be considered to be nonsupported provided the VA is not furnishing them with educational assistance under title 38, United States Code: (38 U.S.C. 1673(d); Pub. L. 98–525)

* * * * *

(f) * * *

(1) * * *

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chs. 30, 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the

course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply. (38 U.S.C. 1673(d); Pub. L. 98–525)

* * * * *

(g) * * *

(2) Except for those enrollments with a beginning date before or the same as the date the school completed the most recent computation, no benefits will be paid either under chapter 106, title 10, United States Code or under chs. 30, 32, 34, 35 or 36, title 38, United States Code when that computation established that the course (10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1673(d); Pub. L. 98–525)

* * * * *

10. In § 21.4206 the introductory paragraph and paragraphs (a) and (e)(1) are revised to read as follows:

§ 21.4206 Reporting fee.

The VA may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(a) Except as provided in paragraph (b) of this section the reporting fee will be computed for each calendar year by multiplying $7.00 by the number of eligible veterans and eligible persons enrolled under 10 U.S.C. ch. 106, or 38 U.S.C. chs. 30, 32, 34, 35 or 36 on October 31 of that year. (10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1784(c); Pub. L. 90–77; Pub. L. 92–540, Pub. L. 93–508, Pub. L. 94–502, Pub. L. 95–202, Pub. L. 98–525)

* * * * *

(e) * * *

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of ch. 106 of title 10, United States Code or chs. 30, 32, 34, 35 and 36 of title 38, United States Code; and (10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1784(b); Pub. L. 98–525)

* * * * *

11. In § 21.4207, the introductory paragraph is revised to read as follows:

§ 21.4207 Failure of school to meet requirements.

When the VA discovers facts which appear to warrant a finding that the school is in violation of specific criteria of 10 U.S.C. ch. 106, or 38 U.S.C. chs. 30, 32, 34, 35 or 36, including failure to meet requirements for approval of a course offered to a veteran or eligible person and institution of policies regarding payment of tuition and fees so as to deny the benefits of the advance payment program, the facts will be referred to the field station Committee on Educational Allowances. (10 U.S.C. 2136, 38 U.S.C.1434, 1641, 1790(b); Pub. L. 98–525)

* * * * *

12. In § 21.4209, paragraph (a)(1) is revised to read as follows:

§ 21.4209 Examination of records.

(a) * * *

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under ch. 106 of title 10, United States Code or chs. 30, 32, 34, 35 or 36 of title 38, United States Code, and (10 U.S.C. 2136, 38 U.S.C. 1434, 1644, 1790; Pub. L. 98–525)

* * * * *

13. In § 21.4250, paragraph (c)(2)(ii) is revised to read as follows:

§ 21.4250 Approval of courses.

* * * * *

(c) * * *

(2) * * *

(ii) A course of education to be pursued under 10 U.S.C. ch. 106 or 38 U.S.C. chs. 30, 32, 34, 35 or 36 offered by a school located in the Canal Zone, Guam or Samoa; (10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1772; Pub. L. 98–525)

* * * * *

[FR Doc. 86–9958 Filed 5–1–86; 8:45 am]
BILLING CODE 8320–01–M

---

38 CFR Part 21

Vocational Rehabilitation and Education; Amendments to the Veterans' Job Training Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans' Job Training Act has been amended by the Veterans' Compensation Rate Increase and Job Training Amendments of 1985. These amendments extend the deadline for a veteran to apply for a job training program. They also extend the deadline for beginning a job training program from July 1, 1986 to July 31, 1987. The length of a veteran's period of unemployment which he or she must have in order to qualify as an eligible veteran under the Act is shortened. The regulations which deal with these matters are amended accordingly.

EFFECTIVE DATE: The amendment to 38 CFR 21.4632(e)(2)(ii) is effective February 1, 1986. All other amendments are effective January 13, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, D.C. 20420 (202) 389–2092.

SUPPLEMENTARY INFORMATION: Public Law 99–238 changes the name of the Emergency Veterans' Job Training Act of 1983 to the Veterans' Job Training Act. It permits new applicants for the program; extends the deadline for beginning a job training program; and changes the unemployment criterion which must be met by a veteran before he or she can qualify for the program.

The VA finds that good cause exists for making these amended regulations final without previous publications of a notice of proposed rulemaking. The changes contained in these regulations are directly based upon the law. The VA must make the Code of Federal Regulations agree with the law. Public participation in this rulemaking is, therefore, unnecessary. Since a Notice of Proposed Rulemaking is unnecessary and will not be published, this change does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2), and is therefore not subject to the requirements of that Act.

Nevertheless, these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. Although small entities will be affected by the extension of the Veterans' Job Training Act, all the effects will derive from the change in the law upon which the regulations are based. The regulations themselves will have no effect upon small entities.

The VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.121.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 15, 1986.

Thomas K. Turnage,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is amended as follows:

1. In § 21.4131, paragraph (j) is revised to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(j) *Veterans' Job Training Act (§ 21.4630).* The day following the last day for which the veteran's employer received payments on the veteran's behalf under the Veteran's Job Training Act. (Pub. L. 98–77, sec. 13; Pub. L. 99–238, sec. 201(a))

* * * * *

1a. In § 21.4135, paragraph (y) is revised to read as follows:

§ 21.4135 [Amended]

(y) *Veterans' Job Training Act (§ 21.4632).* The first day for which the veteran's employer received payments on the veteran's behalf under the Veterans' Job Training Act. (Pub. L. 98–77, sec. 13; Pub. L. 99–238, sec. 201(a))

* * * * *

2. The title of Subpart F–1 and § 21.4600 are revised to read as follows:

Subpart F–1 Veterans' Job Training

* * * * *

§ 21.4600 Job training program.

Sections 21.4600 through 21.4646 establish a Veterans' Job Training Program to assist eligible veterans in obtaining employment through training for employment in stable and permanent positions that involve significant training. The VA makes payments to employers who employ and train eligible veterans in these jobs. The payments assist employers in defraying the costs of necessary training. (Pub. L. 98–77, sec. 4; Pub. L. 99–238, sec. 201(a))

3. In § 21.4610, paragraph (a)(1)(ii) is revised to read as follows:

§ 21.4610 Eligibility requirements.

* * * * *

(a) * * *

(1) * * *

(ii) Have been unemployed for at least 10 of the 15 weeks immediately preceding the date of his or her application for participation in a job training program. (Pub. L. 98–77, sec. 5; Pub. L. 99–238, sec. 210(c))

* * * * *

4. In § 21.4632, paragraph (e)(2) (i) and (ii) are revised to read as follows:

§ 21.4632 Payments.

* * * * *

(e) * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after January 31, 1987;

(ii) For any job training program which begins after July 31, 1987; (Pub. L. 98–543, sec. 212; Pub. L. 99–108; Pub. L. 99–238, sec. 201(e))

* * * * *

[FR Doc. 86–9957 Filed 5–1–86; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BPO–500–FCN]

Medicaid Program; Third Party Liability for Medical Assistance; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends a provision in the Medicaid regulations relating to the methods that a State must use to pay providers for Medicaid claims that involve third party liability payments. The amendment is necessary to assure that regulations published on November 12, 1985, regarding recovery of reimbursement of a claim payment involving third party liability are implemented properly.

EFFECTIVE DATE: These regulations are effective June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Herb Shankroff, (301) 594–6710.

SUPPLEMENTARY INFORMATION:

Background and Provisions of Regulations

Section 1902(a)(25) of the Social Security Act (the Act) requires States with Medicaid programs to seek reimbursement of payment for medical assistance from a third party to the extent that the party is legally liable for services provided under Medicaid. Section 1903(o) prohibits the use of Federal funds for Federal matching of State medical assistance expenditures if there is a liable third party. Medicare regulations under 42 CFR 433.139 implement these provisions. Section 433.139, before it was amended on November 12, 1985 (50 FR 46652), permitted States to use either of two methods of paying claims involving third party liability. Under the first method, States could pay claims involving third party liability only to the extent that the agency's allowed payment exceeded the third party liability. Under the second method, States could pay the full allowed amount of the claim but had to seek recovery from the liable third party within 30 days after payment was made. In the November 12 regulations, we made the following changes:

- For Medicaid claims involving third party liability that are processed on or after May 12, 1986, a State may use the second method of paying the entire claim and then seeking reimbursement only if it has obtained a waiver from HCFA authorizing its use.
- The 30-day requirement for seeking recovery of reimbursement of any third party liability was extended to 60 days. This includes claims paid in which third party liability has been established and claims in which the agency learns of the existence of a liable third party after the claim is paid or benefits become available after the claim is paid.

However, as redrafted, the November 12 regulations did not make explicit that the 30-day requirement, now extended to 60 days, for seeking recovery of reimbursement continues to apply to a State that has obtained a waiver, even though the application of the 60-day requirement for recovery was explained in the preamble to the regulations. Therefore, we are amending § 433.139 as published on November 12 to specify that—

- If the agency has an approved waiver to pay a claim in which probable third party liability has been established and then seek recovery of reimbursement, the agency must seek recovery of reimbursement from the third party to the limit of legal liability within 60 days after the end of the month in which payment is made.
- If the agency learns of the existence of a liable third party after a claim is paid, or benefits become available after the claim is paid, the agency must seek recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.

Waiver of Notice of Proposed Rulemaking

Consistent with the Administrative Procedure Act, we usually issue a notice

of proposed rulemaking and provide the public with an opportunity to comment on changes in our regulations unless we find good cause to waiver this public notice and comment procedure. The correction in these regulations is merely a technical change to clarify existing policy. It does not alter the basic policy in the November 12, 1985 regulations. We do not believe it would be in the best interest of the public to delay the issuance of this clarification in final to obtain public comment. We, therefore, find good cause to waive the notice of proposed rulemaking procedures.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major regulations—that is, those that will have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. We have determined that this regulation change, which is technical in nature, does not meet any of these criteria. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act, we prepare and publish a regulatory flexibility analysis (RFA) for any regulation that will have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. The purpose of the analysis would be to anticipate the impact and to seek alternatives that would have a less significant effect. This technical change will have little impact on State Medicaid agencies and Medicaid providers, which are considered small entities, as it merely clarifies existing policy. Therefore, we have determined, and the Secretary certifies, consistent with the Regulatory Flexibility Act, that these final regulations will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Section 433.139(d) does not contain information collection requirements that are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433 is amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1093(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act, 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.139 is amended by revising paragraph (d) to read as follows:

§ 433.139 Payment of claims

* * * * *

(d) *Recovery of reimbursement.*

(1) If the agency has an approved waiver under paragraph (e) of this section to pay a claim in which the probable existence of third party liability has been established and then seek reimbursement, the agency must seek recovery of reimbursement from the third party to the limit of legal liability within 60 days after the end of the month in which payment is made.

(2) If the agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the agency must seek recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.

(3) Reimbursement must be sought unless the agency determines that recovery would not be cost effective in accordance with paragraph (f) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: March 12, 1986.

Henry R. Desmarais,

Acting Administrotor, Health Care Financing Administration.

Approved: April 16, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-9878 Filed 5-1-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 3

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: These amendments to existing rules confirm that dismissal of the applicable petition or application is the mandatory sanction for failure to comply with time limits for: (1) Filing petitions for review of proposed civil penalties, (2) filing applications for review of notices of violation or cessation orders, and (3) making full payment of proposed civil penalties under section 518(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1268(c) (1982).

EFFECTIVE DATE: June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203; phone (703) 235-3750.

SUPPLEMENTARY INFORMATION: On November 15, 1985, the Office of Hearings and Appeals (OHA) published proposed amendments providing sanctions for failure to comply with the time limit for filing a petition for review of a proposed civil penalty set forth in 43 CFR 4.1151; for failure to comply with the time limit for payment of a proposed assessment set forth in 43 CFR 4.1152; and for failure to comply with the time limit for filing an application for review of a notice of violation or cessation order set forth in 43 CFR 4.1162. *See* 50 FR 47237-38 (Nov. 15, 1985). In each case the sanction proposed was dismissal of the applicable petition or application for review.

Comments on the proposed rules were received from the Mining and Reclamation Council of America, the Pennsylvania Coal Mining Association, and Arch Mineral Corporation. The comments and OHA's responses are set forth below:

Comment 1: It is questionable whether the time limits for filing for administrative review under sections 518(c) and 525(a) of the Act, 30 U.S.C. 1268(c) and 1275(a) (1982), are jurisdictional, as the amendments to the rules assume, or rather are statutes of limitations with which failure to comply must be raised by the Office of Surface Mining (OSM) as an affirmative defense or in a motion to dismiss. *See Zipes* v.

Trans World Airlines, Inc., 455 U.S. 385, 392–98 (1982). Congress was only concerned that payment of a proposed civil penalty precede a hearing, not that payment occur within 30 days. Section 518(c) states only that failure to forward payment within 30 days results in a "waiver" of the right to contest the amount of the penalty or the fact of the violation; it does not expressly bar jurisdiction to conduct administrative review. OHA should take the opportunity of the proposed rulemaking to rescind its decisions holding that untimely filings of petitions for review or applications for review and untimely submission of the amount of a proposed civil penalty deprive it of jurisdiction to consider an appeal.

Response: Section 525(a)(1), 30 U.S.C. 1275(a)(1) (1982), provides that a permittee issued a notice of violation or cessation order or any person having an interest which is or may be adversely affected by such a notice or order "may apply to the Secretary for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification, vacation, or termination." Congress included this provision "[i]n order to assure expeditious review and the process for persons seeking administrative relief from enforcement decisions of Federal inspectors." H.R. Rep. No. 218, 95th Cong., 1st Sess. 130 (1977). Section 525 "establishes clear, definitive administrative review procedures." Id. at 131.

The reason for such procedures was stated:

> H.R. 2 contains comprehensive provisions for inspections, enforcement notices and orders, administrative and judicial review, and penalties. These requirements are of equal importance to the provisions of the bill regarding mining and reclamation performance standards since experience with State surface mining reclamation laws has amply demonstrated that the most effective reclamation occurs when sound performace standards go hand in hand with strong, equitable enforcement mechanisms.

Id. at 128.

Section 518(c), 30 U.S.C. 1268(c), provides that a person charged with a proposed civil penalty shall have 30 days after being informed of its amount to either pay the penalty or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. The Congress stated that the permittee "must forward the amount of the proposed penalty to the Secretary within 30 days of receipt of the notice of proposed penalty." S. Rep. No. 128, 95th Cong., 1st Sess. 1, 86 (1977). A civil penalty would become final after a hearing was held "or waived by act or by operation of law." *Id.* The explanation for this approach was:

> This section also requires the operator (or permittee) to pay the proposed penalty within thirty days after he has been assessed a penalty for violation of the Act or permit. If the permittee wishes to contest either the fact of violation or the amount of the penalty, he shall so notify the Secretary when making the remittance. Upon receipt of a payment from a permittee the Secretary shall place it in an escrow account and should the permittee's challenge by sustained, the payment is to be returned to the permittee with interest. The Committee is of the belief that this procedure will avoid the problem of non-collection of fines.

Id. at 58–59.

The last comment was a reference to difficulties experienced with the civil penalty provisions of the Federal Coal Mine Health and Safety Act of 1969. The Committee stated that variations from the provisions of that law in the surface mining bill were made, in part, "to improve enforcement." *Id.* at 58.

It is OHA's belief that the plain language of Sections 525(a) and 518(c) and the legislative history of these administrative review provisions require that failure to file application for review of notices of violation or cessation orders "within thirty days" of receiving them, as required by Section 525(a), be regarded as failure to meet the jurisdictional prerequisite for administrative review established by the Congress. Interpreting the 30-day period as a matter that OSM must raise as an affirmative defense if it were not complied with would neither "assure expeditious review" nor constitute a "clear, definitive administrative review procedure." Similarly, the language of 518(c) provides that in every case the amount of a proposed civil penalty must be sent to the Department within 30 days of being informed of the amount; only if the person "wishes to contest the amount or the fact of the violation" would the amount be placed in escrow pending the outcome of administrative or judicial review. The consequence of failure to forward the amount of the proposed assessment to the Secretary within 30 days is clearly set forth in the statute: Such a failure "*shall* result in a waiver of *all* legal rights to contest the violation or the amount of the penalty." (Emphasis added.) The statute does not say such a failure may be deemed a waiver, and the Committee report states that a hearing could be waived "by operation of law." The report also states that the permittee "must" forward the amount within 30 days and that the section "requires" this. Nor would allowing the failure to pay within 30 days to be raised as an affirmative defense "improve enforcement" of the civil penalty provisions or "avoid the problem of non-collection of fines."

Zipes v. *Trans World Airlines, Inc.*, *supra*, does not indicate the time limits of the surface mining act should be interpreted as statutes of limitations rather than jurisdictional prerequisites. That was a case under Title VII of the Civil Rights Act of 1964 in which the Court held that filing charges of discrimination with the Equal Employment Opportunity Commission (EEOC) within the time prescribed by statute was not a jurisdictional prerequisite to bringing a Title VII suit in Federal court. The Court found the Act's provisions did not limit Federal court jurisdiction to cases in which there had been a timely filing with the EEOC under a separate provision that did not refer to court jurisdiction. The Court supported its decision by referring to 1972 Congressional action in amending the Act, and to the principle that a literal reading of filing provisions would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." 455 U.S. at 397. It also noted the "remedial purpose of the legislation as a whole." *Id.* at 398. In the surface mining act the Congress sought to provide a statutory scheme of "strong, equitable enforcement mechanisms" with "clear, definitive administrative review procedures" and a remedial purpose of improving enforcement of civil penalties by requiring that they be paid within 30 days whether or not the person was contesting them. It is apparent that this scheme and purpose are markedly different from the provisions of the Civil Rights Act considered by the Court in *Zipes*.

OHA therefore adheres to its position that compliance with these time limits in the surface mining act is a jurisdictional prerequisite to administrative review and that dismissal is mandatory for failure to comply. The suggestion in the comment is accordingly rejected.

Comment 2: If the Department will not allow a hearing when a person filing a petition for review of a proposed civil penalty pays the amount after 30 days, the preamble to the rule should clarify that such an amount will be returned with the dismissed petition.

Response: The only circumstance under which the amount of a proposed civil penalty or any part of it can be returned is if a person pays it within 30 days of being informed of the amount, contests either the amount of the penalty or the fact of the violation, and successfully demonstrates that no

violation occurred or that the amount of the penalty should be reduced. 30 U.S.C. 1268(c); 30 CFR 723.20(c). If the amount is paid after 30 days it will be regarded as payment of the penalty that is due, since there is no jurisdiction to conduct administrative review. 30 U.S.C. 1268(c); 30 CFR 723.20(a). There is no legal authority to support the suggestion in the comment and it is therefore rejected.

Comment 3: There should be a clarification that failure to file a petition for review of a proposed civil penalty or to pay the amount assessed within 30 days does not preclude filing an application for review of a notice of violation or cessation order or operate as an admission of the fact of violation in such proceeding.

Response: The statute establishes separate proceedings to review notices of violation and cessation orders under Section 525 and to review proposed civil penalties under Section 518. Although hearings under Section 518 shall be consolidated with other proceedings resulting from Section 521 when appropriate (30 U.S.C. 1268(b)), a person may elect administrative review under either Section 518 or Section 525 or both and failure to elect one does not affect one's rights under the other. Specifically, dismissal of a petition for review of a proposed civil penalty because the petition or the proposed amount of the penalty was untimely would not be res judicata on the issue of the fact of the violation in an application for review proceeding arising from the same notice of violation or cessation order. The amendments to 43 CFR 4.1151 and 4.1152 have been revised to make this explicit.

Comment 4: The rules should allow the administrative law judge discretion to accept a petition for review or application for review outside of the 30 day time limit for good cause or exigent circumstances.

Response: As discussed in the response to Comment 1, compliance with the 30 day limits for filing is required for OHA jurisdiction. Therefore, neither an administrative law judge nor the Interior Board of Land Appeals may excuse failure to comply with these limits. The suggestion in the comment must be rejected.

Comment 5: Sanctions similar to those contained in the proposed amendments should be adopted for failure to comply with the time limits for filing under 43 CFR 4.1280 *et seq.* and 4.1290 *et seq.*

Response: Although the proceedings referred to are not covered in this rulemaking, the surface mining act does not provide time limits for initiating such proceedings as it does for those that are covered by this rulemaking.

Because these rules simply confirm the mandatory nature of existing filing requirements, the Department has determined that these rules are not major, as defined by E.O. 12291; will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); and will not significantly affect the quality of the human environment, and therefore no detailed statement is required under the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

The rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3507.

The author of these regulations is Will A. Irwin, Administrative Judge, Board of Land Appeals, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Surface mining.

For the reasons stated in the preamble and under the authority of 30 U.S.C. 1201 *et seq.* (1982), 4.1151, 4.1152, and 4.1162 of Subpart L of Part 4 of Title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: March 26, 1986.

Ann McLaughlin,

Under Secretary.

PART 4—[AMENDED]

43 CFR Part 4 is amended as follows:

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

Authority: 30 U.S.C. 1256, 1260, 1261, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

2. In part 4, §4.1151 is amended by adding paragraph (c) as follows:

§ 4.1151 Time for filing.

* * * * *

(c) No extension of time will be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (a) or (b) of this section. If a petition for review is not filed within the time period provided in paragraph (a) or (b) of this section, the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under section 525 of the Act to review the notice of violation or cessation order involved, shall be deemed admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the Secretary.

3. In Part 4, § 4.1152 is amended by adding paragraph (d), as follows:

§ 4.1152 Contents of petition; payment required.

* * * * *

(d) No extension of time will be granted for full payment of the proposed assessment. If payment is not made within the time period provided in §4.1151 (a) or (b), the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under section 525 of the Act of review the notice of violation or cessation order involved, shall be deemed admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the Secretary.

4. In Part 4, § 4.1162 is revised.

§ 4.1162 Time for filing.

(a) Any person filing an application for review under § 4.1160 *et seq.* shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

(b) No extension of time will be granted for filing an application for review as provided by paragraph (a) of this section. If an application for review is not filed within the time period provided in paragraph (a) of this section, the application shall be dismissed.

[FR Doc. 86-9918 Filed 5-1-86; 8:45 am]
BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 86-179]

Revision of the FCC's Rules Requiring the Inclusion of a Table of Contents and Summary of Filing in Documents Longer Than Ten Pages

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rule governing the preparation of summaries and tables of contents for documents filed in Commission proceedings. This action is necessary to alleviate confusion in the existing rule and has the effect of exempting certain routine filings from these requirements. Unless otherwise exempted, all documents and pleadings filed with the Commission that exceed ten pages must

include a table of contents and a summary.

EFFECTIVE DATE: May 27, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joseph S. McBride, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

Third Order

Adopted: April 11, 1986.
Released: April 18, 1986.
By the Commission.

1. On September 5, 1985, the Commission adopted a Second Order in this proceeding that added § 1.49(d) of the Rules. 50 FR 37856 (1985). That provision exempts certain discovery pleadings from the general requirement of Section 1.49 that all pleadings and documents in excess of ten pages filed in any proceeding contain both a summary and table of contents.

2. Since the release of the Second Order, we have had informal discussions with members of the communications bar. They believed that the use of the word "proceeding" in this rule was vague and might require the submission of summaries and tables of contents in instances where they were neither needed nor desired or not require such submissions where they were desired. To avoid any ambiguity they requested that the Commission revise the rule to make it applicable only in specifically enumerated situations. After consideration and review of those suggestions, we find that the clarity and understanding of our Rules would be enhanced by expanding the exclusions listed in § 1.49(d) to include FCC Forms, FCC applications, transcripts, depositions, interrogatories and answers thereto, letters, and exhibits or appendices accompanying any document, application, or pleading submitted to the Commission. For example, with respect to the latter, a report or affidavit accompanying a petition for reconsideration or petition to deny would not require a summary or table of contents.

3. The purpose of this rule is to provide the Commission and its staff with an easy tool for analyzing and retrieving filings expeditiously and effectively. Documents such as petitions to deny, applications for review, petitions for reconsideration, and rule making comments are often lengthy and contain numerous arguments. The documents listed above that are not intended to be covered by the rule are generally either standardized for easy reference, such as FCC forms and applications, address a limited number of preestablished issues, or concern materials that merely support issues raised in the primary filing. In those documents, summaries and tables of contents are unnecessary. On the other hand, we do not believe that the suggestion to apply the rule only to those matters specifically enumerated is sound.

4. Our purpose is to require summaries generally for all documents exceeding 10 pages. We believe that the specific exclusions should adequately address the concerns which arose after the original rules were adopted. Should any ambiguity arise in the future regarding a specific document, the interested party may request an informal interpretative ruling from the Bureau's staff. We again emphasize that all documents, regardless of the nature of the proceeding, must comply with the requirements of § 1.49 of the Rules, unless one of the exceptions in § 1.49(d) applies.

5. We find that prior notice and public comment procedures are unnecessary to implement this amendment involving general rules of agency practice and procedure. 5 U.S.C. 553(b)(3)(A).

6. In view of the foregoing and pursuant to sections 1, 4 (i) and (j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), and 303(r), it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth below, effective May 27, 1986.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

William J. Tricarico,
Secretary.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

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

2. In § 1.49, paragraphs (b), (c), and (d) are revised to read as follows:

§ 1.49 Specifications as to pleadings and documents.

* * * * *

(b) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a table of contents with page references.

(c) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which filings as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a summary of the filing, suitably paragraphed, which should be a succinct, but accurate and clear condensation of the substance of the filing. It should not be a mere repetition of the headings under which the filing is arranged. For pleadings and documents exceeding ten but not twenty-five pages in length, the summary should seldom exceed one and never two pages; for pleadings and documents exceeding twenty-five pages in length, the summary should seldom exceed two and never five pages.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to:

(1) Interrogatories or answers to interrogatories, and depositions;

(2) FCC forms or applications;

(3) Transcripts;

(4) Contracts and reports;

(5) Letters; or

(6) Hearing exhibits, and exhibits or appendicies accompanying any document or pleading submitted to the Commission.

Note.—The table of contents and the summary pages shall not be included in complying with any page limitation requirements as set forth by Commission rule.

[FR Doc. 86–9861 Filed 5–1–86; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 85–387; RM–4929]

FM Broadcast Station in Chatom, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Channel 291A for Channel 276A at Chatom, Alabama, and modifies the permit of Station WCCJ (FM), in response to a joint petition filed by Radio Hattiesburg, Inc. and June G. Fuss. The substitution will enable Station WHER (FM), Hattiesburg, Mississippi, to move its transmitter site and maintain its Class C status.

EFFECTIVE DATE: June 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations; (Chatom, Alabama); MM Docket No. 85–387 and RM–4929.

Adopted: April 14, 1986.

Released: April 25, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 50 FR 51712, published December 19, 1985, seeking comments on the proposed substitution of Channel 291A [1] for 276A at Chatom, Alabama, and modification of the license of Station WCCJ (FM) [2] accordingly, at the joint request of Radio Hattiesburg, Inc. ("RHI") and June G. Fuss ("FUSS").[3] The proposal, if implemented, would enable Station WHER to relocate its transmitter and maintain its Class C status at Hattiesburg. The *Notice* also directed the permittee of Station WCCJ (FM), to show cause why its permit should not be modified, as proposed. In response to the *Notice*, supporting comments were filed by RHI, Benchmark and EJM Broadcasting ("EJM"). EJM also filed reply comments.

2. In its comments, Benchmark states that it is willing to modify its permit for Station WCCJ (FM) provided it is reimbursed for expenses incurred in changing frequencies.

3. RHI advises that it will reimburse Benchmark for reasonable costs incurred in changing WCCJ's frequency. Additionally, RHI remarks that it will reimburse Fuss for monies it expended in connection with the original Chatom proposal.

4. In its comments, EJM interposes no objection to the proposed substitution of Channel 291A for 276A, as advanced in the *Notice*. However, it advises that it does object to petitioner's original proposal to substitute Channel 254A for 276A at Chatom which would conflict with its pending proposal to upgrade the facilities of Station WDLT–FM at Chickasaw, Alabama (see fn. 1, *supra*).

5. As set forth in the *Notice and Order to Show Cause*, established Commission policy provides for reimbursement of reasonable costs incurred in changing a station's frequency from the party benefitting from a new channel allotment. Therefore, equitable considerations dictate that RHI should reimburse Benchmark for its reasonable costs in changing channels. Assisted by guidelines such as *Circleville, Ohio*, 8 F.C.C. 2d 159 (1967), the appropriate costs constituting a "reasonable" reimbursement figure are generally left to the good faith judgment of the parties, subject to Commission approval in the event of disagreement. See also, *Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976).

PART 73—[AMENDED]

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 June 2, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below, as follows:

City	Channel No.
Chatom, AL	291A

7. It is further ordered, That, pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding permit held by Benchmark Communications Corporation for Station WCCJ(FM), Chatom, Alabama, is modified effective June 2, 1986, to specify operation on Channel 291A in lieu of Channel 276A with the condition it will be reimbursed for the reasonable costs incurred in switching frequencies from Radio Hattiesburg, Inc. The permit modification for Station WCCJ(FM) is subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the permit of Station WCCJ except the channel as specified above. Any other changes, except for those so specified under § 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of § 73.1620 of the Rules, provided the transmission facilities comply in all respects with the permit except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. It is further ordered, That the Secretary of the Commission shall send a copy of this *Order* by *Certified Mail, Return Receipt Requested*, to Benchmark Communications Corporation, permittee of Station WCCJ(FM), Chatom, Alabama, at the following address: 4700 S.W. 75th Avenue, Miami, Florida 33155; and also a copy thereof, by regular mail to its attorney, John Wells King, Esq., Haley, Bader and Potts, Suite 600, 2000 M Street, NW., Washington, DC 20326–4574.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–9850 Filed 5–1–86; 8:45 am]

BILLING CODE 6712–01–M

[1] Petitioners initially proposed the substitution of Channel 254A for Channel 276A at Chatom. However, that proposal conflicted with a separate request to substitute Channel 254C1 for Channel 252A at Chicksaw, Alabama, and to modify the license of Station WDLT–FM (RM–5108), licensed to EJM Broadcasting. As a result, Channel 291A was substituted for consideration herein.

[2] Formerly Station WDAL (FM).

[3] As indicated in the *Notice*, at the time this petition was filed, Fuss was the permittee of Station WDAL (FM). However, the permit was subsequently assigned to Benchmark Communications Corporation and the call letters changed to WCCJ (FM).

---

47 CFR Part 73

[MM Docket No. 85–222; RM–4977]

FM Broadcast Station in Spencer, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 289A to Spencer, Oklahoma, as the community's first local FM service, at the request of Lift Him Up Outreach Ministries, Inc.

EFFECTIVE DATE: June 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 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.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations; (Spencer, Oklahoma); MM Docket No. 85-222 and RM-4977.

Adopted: April 9, 1986.
Released: April 24, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 30973, published July 31, 1985, seeking comments on the allocation of Channel 289A to Spencer, Oklahoma, as the community's first local FM service, at the request of Lift Him Up Outreach Ministries, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the frequency, if allocated. No other comments were received. Channel 289A can be allocated to Spencer in compliance with the Commission's minimum distance separation and other technical requirements if the transmitter site is restricted to an area at least 1.1.kilometers (0.7 miles) north in order to avoid a short-spacing to Station KGOU, Channel 292A, Norman, Oklahoma.

PART 73—[AMENDED]

2. We believe the public interest would be served by allocating the channel as proposed since it could provide Spencer 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 June 2, 1986, 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.
Spencer, OK	289A

3. The window period for filing applications on this channel will open on June 3, 1986, and close on July 3, 1986.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-9855 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-519; RM-4419]

TV Broadcast Station in Gayles or Shreveport, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 45 to Shreveport, Louisiana as its fourth commercial television channel in response to two petitions for reconsideration filed by Word of Life Ministries, Inc. and Wesley Godfrey. The action reverses an earlier Commission action dismissing the proposal for lack of an expression of interest in the assignment.

EFFECTIVE DATE: June 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order

(Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Gayles or Shreveport, Louisiana); MM Docket No. 83-519 and RM-4419.

Adopted: April 9, 1986.
Released: April 25, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it two petitions for reconsideration of the *Report and Order*, 49 FR 30752, published August 1, 1984 dismissing the request of Saul Dresner ("Dresner") to assign UHF Television Channel 45 to either Gayles or Shreveport, Louisiana. Reconsideration of that decision is sought by Word of Life Ministries, Inc. ("Word of Life") and Wesley Godfrey ("Godfrey").

2. The Commission dismissed the proposal of Dresner at his request. No other comments expressing an interest in the proposal were received. Both Word of Life and Godfrey, in their petitions for reconsideration have filed statements of intent to construct and operate a station on Channel 45 if assigned to Shreveport, Louisiana.

3. We believe the public interest would be served by the assignment of UHF Television Channel 45 to Shreveport, Louisiana since it could provide the community with a fourth commercial television service. Inasmuch as the channel would have been assigned earlier had it not been for a lack of expression of interest, we believe that a reversal of our earlier dismissal of the request is warranted.

4. The assignment of UHF Television Channel 45 can be made to Shreveport, Louisiana in compliance with the minimum distance separation and other technical requirements with a positive offset.

5. In view of the above consideration, it is ordered, That the petitions for reconsideration filed by Word of Life Ministries, Inc. and Wesley Godfrey are granted.

PART 73—[AMENDED]

6. It is further 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 June 2, 1986, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community.

City	Channel No.
Shreveport, LA	3 -, 12, *24 -, 33, and 45 +

7. It is further ordered, That this proceeding is terminated.

8. For further information contact D. David Weston, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 86-9849 Filed 5-1-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 17]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts two new types of standardized replaceable light sources to be used in replaceable bulb headlighting systems on motor vehicles. In a two light source system developed by General Motors Corporation ("GM") one source provides the upper beam, and the other, the lower beam. The new light sources will be known as "HB3" and "HB4". The present standardized replaceable light source is now designated "HB1".

The rule is based upon a notice published January 7, 1986, that proposed dimensional changes differing from those originally proposed on May 13, 1985.

DATE: Effective date of the amendment is June 2, 1986.

ADDRESS: Petitions for reconsideration should be addressed to the Administrator, National Highway Traffic Safety Administration, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA, Washington, DC (202-426-2720).

SUPPLEMENTARY INFORMATION: On May 13, 1985, NHTSA published a proposal to allow new types of standardized replaceable light sources in motor vehicle headlamps (50 FR 19961). Two of these light sources were designed by GM, one intended to provide the upper beam, which would be denominated HB3, and the other to provide the lower beam, to be denominated HB4. After the close of the comment period, GM submitted new drawings and specifications for the light sources which it felt met the needs of the industry as a result of its efforts with the SAE Replaceable Bulb Task Force. Later it submitted further updates of specifications.

Accordingly, on January 7, 1986, NHTSA published a second NPRM on this subject, proposing a revision in dimensional specifications (Figures 19 and 20) incorporating the GM changes, which included the provision for a seal (51 FR 641). NHTSA is now amending Standard No. 108 to add the HB3 and HB4 light sources in accordance with the previous proposals.

In the May 1985 notice, NHTSA proposed that the light sources meet the photometric requirements of Type F sealed beam headlighting systems. With reference to the internal heat tests of S6.7, no flash rate is currently specified for a turn signal that is incorporated into a headlamp housing. NHTSA, believing that there could be excessive buildup of heat from a steady burning signal, proposed to include a flashing turn signal at the test condition of 90 flashes per minute with a 75 plus or minus 2% current "on-time" performance. Because HB3 and HB4 have filament locations different from that of the current standardized replaceable light source (to be known from now on as "HB1"), NHTSA proposed changing the bulb deflection test to accommodate these differences. The point of deflection would be at a specific measured distance from a reference plane instead of being located by reference to the filament. This change was also proposed for the HB1 with the actual deflection point remaining the same. Additionally, for HB3 and HB4, the direction of force application was specified to be radially inward anywhere in the perpendicular plane located at the application point.

In its proposal, NHTSA also sought comment on whether there were any safety reasons, such as excessive glare, excessive candela, or insufficient illumination to prohibit intermixes of the HB1 with HB3 and HB4 and conversely to seek appropriate photometric and other specifications which would be required to permit such intermix, should commenters deem that course of action desirable.

The proposals in the second notice published in January 1986 were confined to dimensional changes, and the addition of a protective seal for HB3 and HB4 meeting the performance criteria proposed.

Comments were received on both proposals from major vehicle and lighting equipment manufacturers. With regard to the photometry of HB3 and HB4, Chrysler Corporation and Ford Motor Company urged that only one photometric performance requirement be implemented for all headlamp systems. Because three performance requirements currently exist; Type F, SAE J579a, and SAE J579c, this suggestion cannot be implemented at this time. Accordingly, NHTSA has proceeded to adopt the Type F photometrics for the HB3 and HB4, a proposal that was supported by Sylvania GTE, Department of California Highway Patrol, and GM among others. Further, the comments generally supported intermixing of light sources, given that headlamp systems are all required to meet minimum photometric requirements, and that NHTSA has proposed labeling of the headlamp lens to denote the type of light source used. Ford commented that intermixing will permit designers to optimize lighting for glare and seeing distance. On the other hand, GTE Sylvania and General Electric were opposed to intermixing until further study of the likely effects can be completed. Sylvania suggested that the SAE Lighting Committee should resolve the questions of intermixing and the related simplification of photometrics to achieve a single performance level. NHTSA believes that as long as photometric performance is met, and the lens identifies the light source, there is no reason to prohibit intermixing, and is amending the standard to allow it provided that the system meets Type F photometrics.

The proposed bulb deflection test specified that the direction of the application of force be radially inward anywhere in the perpendicular plane located at the application point. All those who commented recommended a revised procedure that would exercise the deflection resistance performance while simplifying the test. The basis for the recommendations is the SAE Replaceable Headlamp Bulb Task Force work on SAE XJ1496, Recommended Practice for Headlamp Light Sources. This states essentially that the deflection force should be applied radially at four equally spaced intervals at the light center length of the lower beam filament (or upper if there is only an upper beam filament), beginning at the weakest axis of the bulb crimp. NHTSA agrees with this recommendation because it is a simpler method of achieving the same goal, and the standard is amended accordingly. Comments also supported the proposed test conditions for turn signals in replaceable bulb headlamps (amended in Item 4, 50 FR 21056) and the standard has been amended accordingly.

Regarding the specification changes proposed in January 1986, all comments except those received from Hella and Sylvania supported the proposal. Hella requested ECE tolerances, but would

accept the recommendation by the SAE Bulb Task Force. Sylvania in essence requested a capsule and support envelope with a diameter of at least 19.68 mm for the HB3, because of limitations of its manufacturing equipment, and NHTSA is making this change to accommodate this concern. However, it necessitates the addition of a note requiring the capsule and supports to provide for insertion into the lamp without interfering with the lamp's key. The numbers suggested by the SAE Headlamp Bulb Task Force have been added to Figure 20. The larger diameters could create a burden for headlamp manufacturers but not light source manufacturers such as Sylvania because space will be removed that was previously reserved for internal lamp parts; however, the agency knows of no instance in which lamp design has been so far finalized that this would occur. The NPRM of May 1985 contained a note to the Figures: "Bulb envelope must not exceed this area". This was changed to "Bulb envelope must not exceed this volume" in the January 1986 NPRM. To achieve consistency in the standard and to more clearly state the note, NHTSA is adopting the language used in a similar note for the HB1 light source: "Capsule and supports shall not exceed this envelope."

The commenters discussed other issues of interest as well. Both the Federal Highway Administration (FHWA) and Volkswagen addressed the need to assure adequate illumination of overhead signs, and other highway indicators. The FHWA suggested that new minimum test point values be added to the photometric performance requirements for all headlamps. While this is beyond the scope of the present rulemaking, it will remain under consideration.

Hella recommended that a "standardized bulb" rather than "any" bulb be used for compliance testing, specifically the bulb set forth in the SAE XJ1496 document. NHTSA continues to believe that any light source which is available to the consumer in the market place should be used for compliance testing, rather than one specially prepared for laboratory use.

Some commenters felt that industry terms, such as "9004", should be used to designate light sources rather than NHTSA's terminology, such as "HB1". Other commenters felt that the terminology should be applied in a sequence different from that proposed, such as the 9005 being HB5 and 9006 being HB6. The agency does not deem either of these suggestions desirable. In the first case, should a light source meeting HB1 specifications be developed that uses less power to achieve the same performance, the HB1 nomenclature would allow it to be used in any headlamp designed to use the original light source. But the updated replacement would probably have some other trade number, 9008 for example, to indicate its lower power consumption. This difference in trade numbers could be confusing to consumers seeking to replace the light source. Therefore, NHTSA intends to continue Standard No. 108's nomenclature for headlighting systems. Industry, of course, is free to assign any trade numbers it wishes, but is required to certify that the light source is designed to conform to the requirements of Standard No. 108. The same logic has been applied to replaceable headlamp light sources. In the second case, on the application of the NHTSA terminology, NHTSA proposed the HB number sequence based on the order in which light sources were received for incorporation into the Standard. Additionally, because the European H–4 light source could be different from the proposed U.S. version of that light source and not have the same uses in the U.S. market as it has traditionally had, a distinctly different nomenclature is deemed necessary. Therefore, NHTSA is implementing the nomenclature as proposed for the HB1, HB3 and HB4.

With respect to "designed to conform", some commenters noted that the language proposed for S4.1.1.39 contemplated light sources that "conform" as contrasted with the requirement in S4.1.1.36 that headlamps other than sealed beam be equipped with light sources "designed to conform". To remove this inconsistency with paragraph S4.1.1.36, NHTSA has adopted the "design to conform" language in S4.1.1.39.

The comments reflected a wide range of opinion about the need for labelling of headlamp lenses with information such as light source type, beam type, and photometric performance designation. Lamp manufacturers are concerned about the adverse effects on headlamp performance, especially if the location of the labelling is a specified one. NHTSA has concluded that motor vehicle safety requires identification of the light source, and the proper function of a headlamp (upper or lower beam) when two headlamp types are used on a vehicle. It is not necessary to provide photometric performance information when the lens identifies the light source. Replacement of a light source with one of the same type will assure equivalent and compatible lighting performance. However, there is no compelling reason to specify that any information be located at the lens center. NHTSA has decided to leave placement of the information to the discretion of the manufacturer, as long as the information is placed on the lens area in front of, and used by the light source it is designating.

ETL Testing Laboratories asked for three clarifications of the proposal. The language in proposed S4.1.1.39(f) and (h) regarding "low pressure side" was unclear. The "low pressure side" is the connector side of the HB3 or HB4 light source base. This test of the sealing mechanism does not apply to the HB1. The second point of confusion was the extent of the photometry test of S6.7.2. Except for a headlamp with a single HB1 light source, the photometry test is intended to be a complete testing of all test points for the beam or beams produced by the lamp. Finally, in S6.7.2, a statement was requested on the conditions of time lapse or temperature stabilization occurring after the high temperature test and before the photometry test. NHTSA replies that there should be sufficient time for the temperature of the lamp to stabilize to room ambient temperature.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order No. 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and placed in the public docket. Since use of the two light sources is optional, the rule would not impose additional costs or requirements but would permit manufacturers greater flexibility in the use of headlighting systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rule, are generally not small businesses within the meaning of the

Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Because of the necessity for vehicle, headlamp, and replaceable light source manufacturers to plan production and distribution on an orderly basis, it is hereby found that an effective date earlier than 180 days after issuance of the final rule is in the public interest.

The engineer and lawyer primarily responsible for this rule are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 and 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

1. The definition of "Standardized replaceable light source" in S3 *Definitions* is revised to read:

"Standardized replaceable light source" means an assembly of a capsule, base, and terminals that meets the requirements of S4.1.1.39.

2. In paragraph S4.1.1.36, paragraph (a)(1) is revised to read:

(a)(1) Each replaceable bulb headlamp shall include components which are designed to conform to the applicable specifications of paragraphs S4.1.1.37, S4.1.1.38 and S4.1.1.39.

3. The first sentence of Paragraph (b)(2) of S4.1.1.36 is revised to read:

(2) Section 3.1—Test Voltage and Section 3.5—Photometric Design Requirements, excluding Tables 1 and 2 for headlamps equipped with Type HB3, Type HB4, Types HB1 and HB3, or Types HB1 and HB4, and excluding Table 2 of SAE J579c *Sealed Beam Headlamp Units for Motor Vehicles* December 1978 for headlamps in systems with only Type HB1.

4. In Paragraphs (d)(1), (d)(3), (d)(5), (d)(6)(A), (d)(6)(B), and (d)(7) of paragraph S4.1.1.36, the words "of SAE J579c *Sealed Beam Headlamp Units for Motor Vehicles*, December 1978" are removed and the words "applicable to the headlamp system under test" substituted.

5. A new paragraph (e) is added to S4.1.1.36, before (e)(1) to read: "For a headlamp equipped with one or two Type HB1 light sources the following requirements apply."

6. A new paragraph (f) is added to S4.1.1.36 to read:

"For headlamp systems equipped with Type HB3 and HB4, HB1 and HB3, or HB1 and HB4 light sources, the following requirements apply:"

(1) There shall be no mechanism that allows adjustment of an individual light source, or adjustment of reflector aim on a headlamp with two light sources.

(2) Lower beam photometrics shall be provided by filaments with a minimum average design life of not less than 320 hours.

(3) The lower and upper beams of a headlamp system consisting of two lamps, each containing two light sources (type HB3 and HB4, or type HB1 with HB3 or HB4) shall be provided only as follows:

(i) The lower beam shall be produced in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) or single light source, designed to conform to the lower beam requirements of Figure 17; or,

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) or single light source, designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(4) The lower and upper beams of a headlamp system consisting of four lamps, using HB3 and HB4, HB1 and HB3, or HB1 and HB4 light sources, each containing only a single light source, shall be provided only as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15. The lens of each such headlamp shall be permanently marked with the letter "L".

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15. The lens of each such headlamp shall be permanently marked with the letter "U".

(5) For replaceable bulb headlamps, a ±¼ degree reaim tolerance is permitted for the test points of Figures 15 and 17. The test point 10U–90U shall be measured from the normally exposed surface of the lens face.

7. Paragraph S4.1.1.37 is revised to read:

S4.1.1.37 Each lens-reflector unit manufactured as replacement equipment for a replaceable bulb headlamp system shall be designed to conform to the requirement of S4.1.1.36 when any standardized replaceable light source appropriate for such unit is inserted in it.

8. Section 4.1.1.39 is removed. S4.1.1.40 is redesignated S4.1.1.38 and revised as follows.

S4.1.1.38 The lens of each replaceable bulb headlamp and the base of each standardized replaceable light source shall be marked as follows:

(a) With the symbol "DOT" horizontally or vertically which shall constitute certification that the headlamp or light source conforms to all applicable Federal motor vehicle safety standards.

(b) The base of each Type HB3 and HB4 light source shall also be marked by its manufacturer or importer with its HB Type Designation and the name or trademark registered with the U.S. Patent Office of the manufacturer and importer (if applicable).

(c) The lens of each replaceable bulb headlamp using HB3 or HB4 light sources, or HB1 light sources in conjunction with HB3 or HB4 light sources within a headlamp system on a motor vehicle shall permanently display the Type Designation(s) for that standardized replaceable light source on the lens in front of each light source.

9. Paragraph S4.1.1.38 is redesignated S4.1.1.39 and revised as follows:

S4.1.1.39 Each standardized replaceable light source shall be designed to conform to the following requirements:

(a) A Type HB1 light source shall be designed to conform to the dimensions specified in Figure 3 and shall incorporate a silicone O-ring. A Type HB3 light source shall be designed to conform to the dimensions specified in Figure 19. A Type HB4 light source shall be designed to conform to the dimensions specified in Figure 20.

(b) Each standardized replaceable light source shall be designed to conform to the following general specifications:

Specification	Lower beam	Upper beam
Maximum power, watts:		
HB1	50	70.
HB3		70.
HB4	60	
Luminous flux, lumens:		

Specification	Lower beam	Upper beam
HB1	700−15 percent.	1,200±15 percent.
HB3		1,700±12 percent.
HB4	1,000±15 percent.	
Minimum average design life, hours: all.	320	150.

(c) The standardized replaceable light source filament(s) shall be subject to seasoning before measurement of maximum power and luminous flux.

(d) Measurement of maximum power and luminous flux shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux for the HB1 shall be in accordance with the Illuminating Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed on HB1 and HB4, and shall be made with the electrical connector and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the HB3 and HB4 shall be with the base covered with a white cover shown in Figures 19–1 and 20–1. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

(e) Measurement of minimum average design life shall be made at 14.0v for all light sources. Testing is conducted in a completed headlamp assembly, or equivalent, placed in the attitude in which the assembly is to be installed on a motor vehicle.

(f) The capsule, lead wires and/or terminals on each Type HB1, Type HB3 and Type HB4 light source shall be installed in the base so as to provide an airtight seal. Such a seal exists on Type HBS and Type HB4 when no air bubbles shall appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture of 0.796±0.004 in. (20.22±0.10 mm) (Type HB3) or 0.875±0.004 in. (22.2±0.1 mm) (Type HB4) and subject to a minimum air pressure of 69kPa (10 P.S.I.G.) on the glass capsule side.

(g) After the force deflection test conducted in accordance with S7, the permanent deflection of the glass envelope shall not exceed 0.005 in. (0.13 mm) in the direction of the applied force.

(h) A general tolerance shall apply to Figure 3 as follows: ±0.004 in. (0.10 mm) to all linear dimensions and ±1°00′ to all angular dimensions except for referenced dimensions and unless otherwise specified.

10. Paragraph S4.5.8 is amended by adding the following as a second sentence:

S4.5.8 * * * On a motor vehicle equipped with a headlighting system comprising four replacement bulb headlamps designed to conform to the photometry of Figure 15, the lamps marked "L" may be wired to remain permanently activated when the lamps marked "U" are activated.

11. Paragraph S4.5.9 is revised to read:

S4.5.9 The wiring harness or connector assembly of a replaceable bulb headlamp with two identical standardized replaceable light sources or a four-lamp replaceable bulb headlamp system which uses identical light sources in all four lamps shall be designed so that the filaments not intended to be used with the lens prescription in front of such filament shall not be illuminated.

12. Paragraph S6.1. is revised is to read:

S6.1 *Photometry.* A replaceable bulb headlamp shall be tested according to paragraph S3.5, Photometric Design Requirements, and Table 1 of SAE Standard J579c *Sealed Beam Headlamp Units for Motor Vehicles,* Dec. 1978, or by Figure 15 or 17 of Standard 108, as applicable, after the tests specified in S6.2, S6.4, S6.6, S6.7.1, S6.7.2 and S6.8.

13. Paragraphs S6.7 and S6.8 are revised to read:

S6.7 *Temperature and internal heat tests.* A headlamp with one or more standarized replaceable light sources shall be tested according to S6.7.1 and S6.7.2. Tests shall be made with all filaments lighted at design voltage that are intended to be used simultaneously in the headlamp and which in combination draw the highest total wattage. These include but are not limited to filamants used for turn signal lamps, fog lamps, parking lamps, and headlamp lower beams lighted with upper beams when the wiring harness is so connected on the vehicle. If a turn signal is included in the headlamp assembly, it shall be operated at 90 flashes a minute with a 75±2% current "on time". If the lamp produces both the upper and lower beam, it shall be tested in both the upper beam mode and the lower beam mode under the conditions above described, except for a headlamp with a single HB1 light source.

S6.7.1 *Temperature cycle.* A headlamp mounted on a headlamp test fixture shall be subjected to 10 complete consecutive cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the lamp shall be energized commencing at point "A" of Figure 6 and de-energized at point "B". Separate or single test chambers may be used to generate the environment of Figure 6. All drain holes, breathing devices or other openings or vents of the headlamps shall be in their normal operating positions.

S6.7.2 *Internal heat test.*

(a) The headlamp lens surface that would normally be exposed to road dirt shall be uniformly sprayed with any appropriate mixture of dust and water or other appropriate materials to reduce the photometric output at the H–V test point of the upper beam (or the 1/2D–1 1/2R test point of the lower beam as appropriate) to 25±2% of the output originally measured in the photometric test performed under S4.1.1.36(b). A headlamp with a single HB1 light source shall be tested on the upper beam only. Such reduction shall be determined under the same conditions as that of the original photometric measurement.

(b) After the determination has been made that the photometric output of the lamp has been reduced as specified in S6.7.2(a), the lamp and its mounting hardware shall be mounted in an environmental chamber in a manner similar to that indicated in Figure 7, "Dirt/Ambient Test Setup". The headlamp shall be soaked for one hour at a temperature of 95+7−0 degrees F (34+4−0 degrees C) and then the lamp shall be energized according to S6.7 for one hour in a still air condition, allowing the temperature to rise from the soak temperature.

(c) The lamp shall be returned to a room ambient temperature of 73+7−0 degrees F (23+4−0 degrees C) and a relative humidity of 40±10% and allowed to stabilize to the room ambient temperature. The lens shall then be cleaned.

S6.8 *Humidity.* The headlamp mounted on a test fixture shall be placed in a controlled environment consisting of a temperature of 100+7−0°F (38+4−0°C) with a relative humidity of not less than 90%. All drain holes, breathing devices, and other designed openings shall be in their normal operating positions. The headlamp shall be subjected to 20 consecutive 6-hour test cycles. In each cycle, it shall be energized at design voltage with the highest combination of filament wattages that are intended to be used, including a turn signal flashing at 90 flashes a minute with a 75±2% current "on-time", if so equipped, and then de-

energized for 5 hours. After completion of the last cycle, the lamp shall be soaked for 1 hour at 73+7−0°F (20+4 −0°C) and relative humidity of 40±10% before it is removed for photometric testing. The headlamp shall be tested for photometrics at 10±1 minutes following completion of the humidity test.

14. Section S7 is revised to read:

S7 Deflection test for standardized replaceable light sources.

(a) *Type HB1 light source.* With the light source rigidly mounted in a fixture in a manner indicated in Figure 8, apply a force of 4.0±0.1 pounds (17.8±0.4N) at a distance "A" from the reference plane perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force application shall be applied using a rod with a hard rubber tip with a minimum spherical radius of 0.39 in (1 mm). The bulb deflection shall be measured at the glass capsule surface at 180 degrees opposite to the force application.

(b) *Type HB3 and HB4 light sources.* The deflection test is conducted according to paragraph (a), except that the force shall be applied radially to the surface of the glass capsule in four locations in a plane parallel to the reference plane and spaced at a distance "A" from that plane. These force applications shall be spaced 90 degrees apart starting at the point perpendicular to the smallest dimension of the pressed seal of the glass capsule.

15. In Tables II and IV, Column 2 for the Headlamps is revised to read:

Headlamps.....	On the front, each headlamp providing the upper beam, at the same height, 1 on each side of the vertical centerline, each headlamp providing the lower beam, at the same height, 1 on each side of the vertical centerline, as far apart as practicable. If a single standardized replaceable light source is used to provide the lower beam in a headlamp with two standardized replaceable light sources, it shall be the farthest one from the vertical centerline.

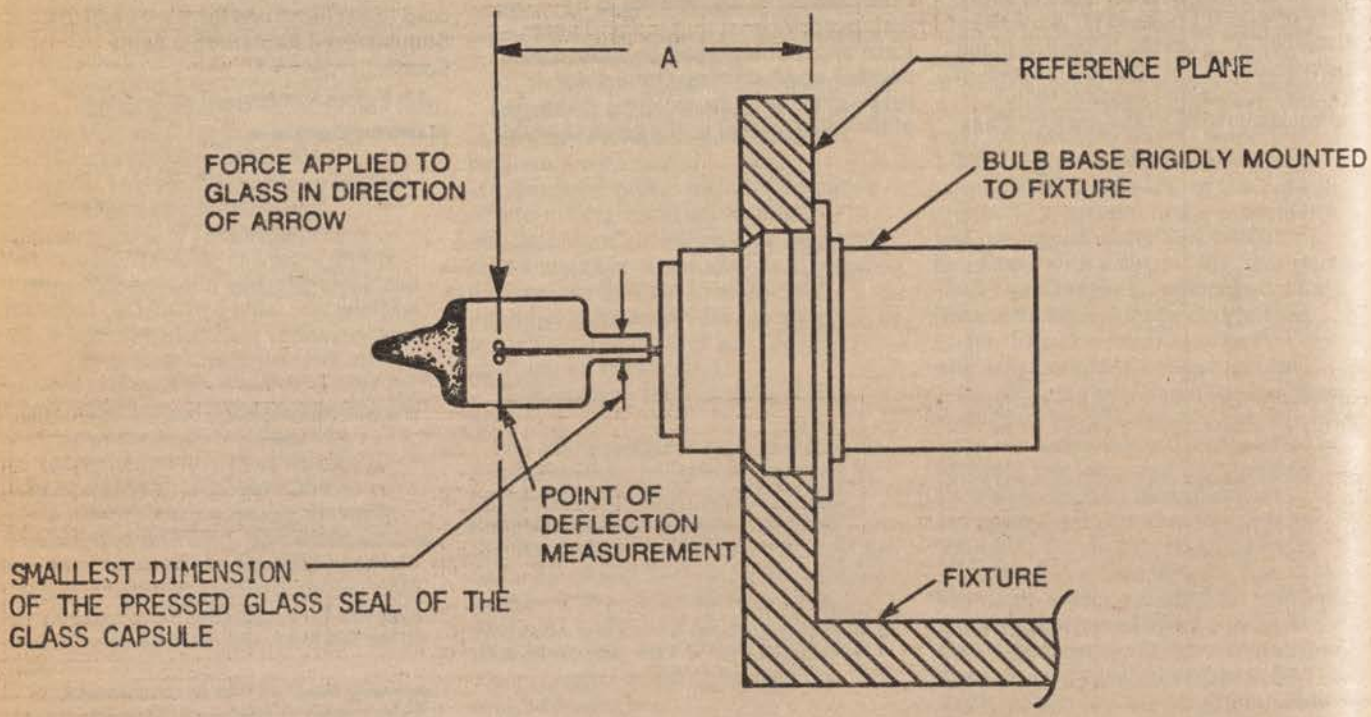
16. The title of Figure 3 is revised to read "Specifications for the Type HB1 Standardized Replaceable Light Source."

17. Figure 8 is revised as follows:

BILLING CODE 4910-59-M

Figure 8

BULB DEFLECTION TEST



STANDARDIZED REPLACEABLE LIGHT SOURCE TYPE	DIMENSION "A"
HB1	44.50 ± 0.38MM (1.75±0.015IN)
HB3	31.50 ± 0.20MM (1.24±0.008IN)
HB4	31.50 ± 0.20MM (1.24±0.008IN)

18. New Figures 17, 19 and 20 are added as follows:

BILLING CODE 4910-59-M

FIGURE 17

PHOTOMETRIC TEST POINT VALUES.

2-Lamp Systems

UPPER BEAM			LOWER BEAM		
Test Points deg	cd max.	cd min.	Test Points deg	cd max.	cd min.
2U-V	--	1,500	10U-90U	125	--
1U-3R and 3L	--	5,000	1U-1-1/2L to L	700	--
H-V	75,000	40,000	1/2U-1-1/2L to L	1,000	--
			1/2D-1-1/2L to L	3,000	--
			1-1/2U-1R to R	1,400	--
H-3R and 3L	--	15,000			
H-6R and 6L	--	5,000	1/2U-1R to 3R	2,700	--
H-9R and 9L	--	3,000	1/2D-1-1/2R	20,000	10,000
H-12R and 12L	--	1,500	1D-6L	--	1,000
			1-1/2D-2R	--	15,000
1-1/2D-V	--	5,000	1-1/2D-9L and 9R	--	1,000
1-1/2D-9R and 9L	--	2,000	2D-15L and 15R	--	850
2-1/2D-V	--	2,500	4D-4R	12,500	--
2-1/2D-12R and 12L	--	1,000			
4D-V	12,000	--			

FIGURE 19

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

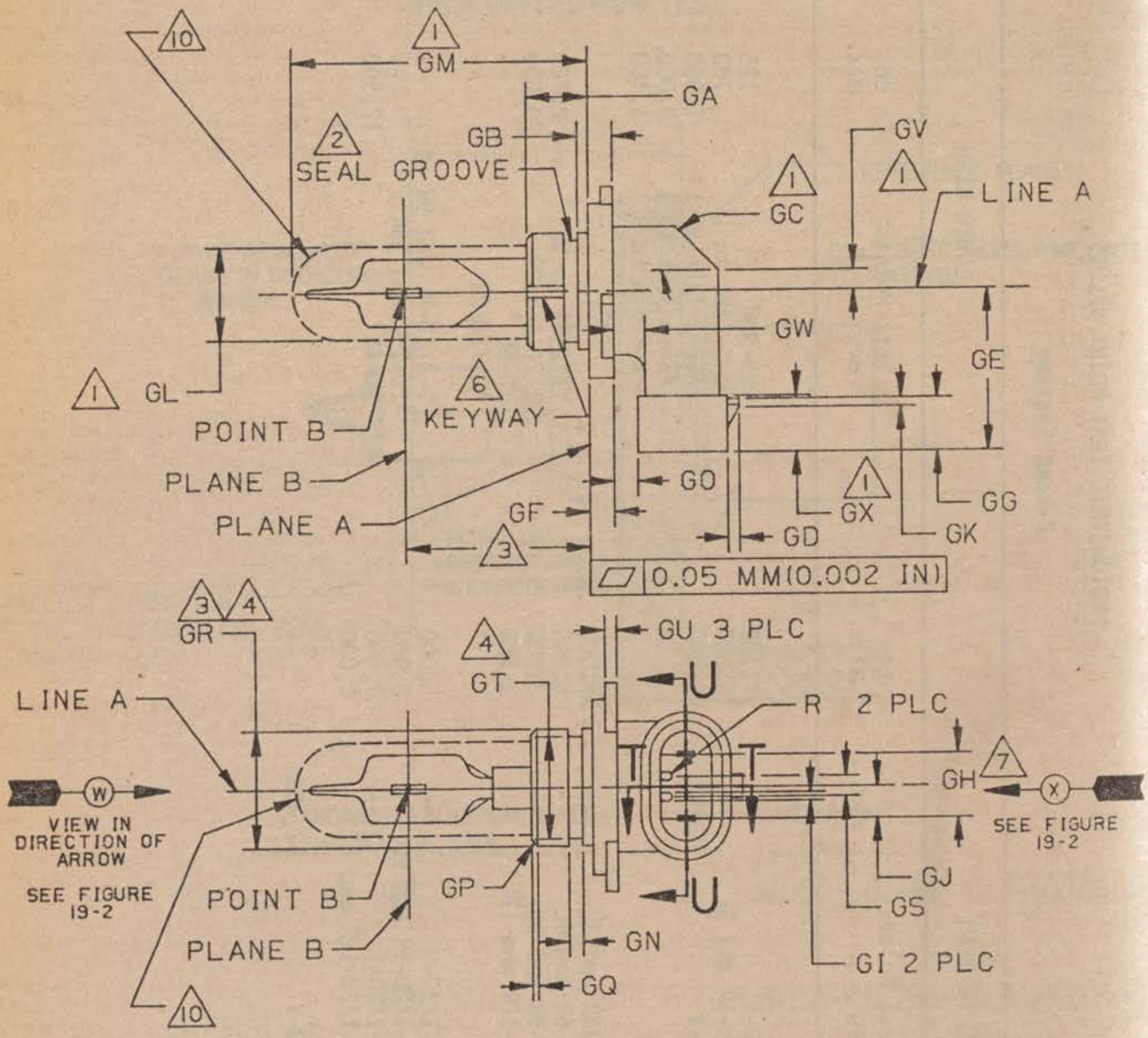


FIGURE 19 (CONT.)

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

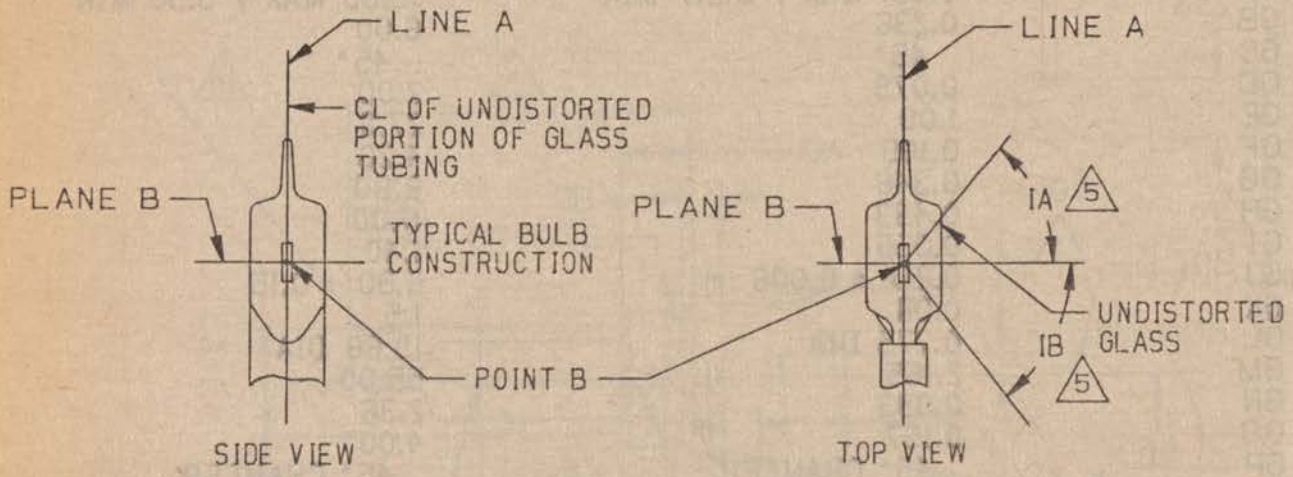
DIMENSION	INCHES	MILLIMETRES
GA	0.591 MAX / 0.217 MIN	15.00 MAX / 5.50 MIN
GB	0.236	6.00
GC	45°	45°
GD	0.079	2.00
GE	1.09	27.8
GF	0.165	4.20
GG	0.346	8.80
GH	0.433	11.00
GI	0.055	1.40
GJ	0.217 ± 0.006	5.50 ± 0.15
GK	0.06	1.5
GL	0.775 DIA	19.68 DIA
GM	2.165	55.00
GN	0.093	2.36
GO	0.157	4.00
GP	45° CHAMFER	45° CHAMFER
GQ	0.039	1.00
GR	0.787 ± 0.002 DIA	20.00 ± 0.05 DIA
GS	0.138	3.50
GT	$0.687\ ^{+0.004}_{-0.000}$ DIA	$17.46\ ^{+0.10}_{-0.00}$ DIA
GU	0.079	2.00
GV	0.138	3.5
GW	0.209 MIN	5.30 MIN
GX	0.378	9.60

1. DIMENSIONS SHOWN ARE MAXIMUM-MAY BE SMALLER
2. BULBS MUST BE EQUIPPED WITH A SEAL. THE BULB-SEAL ASSEMBLY MUST WITHSTAND A MINIMUM OF 69kPA. (10 P.S.I.G.) WHEN THE ASSEMBLY IS INSERTED INTO A CYLINDRICAL APERTURE OF 20.22±0.10 MM (0.796±0.004 IN).
3. SEE FIGURE 19-5
4. DIAMETERS MUST BE CONCENTRIC WITHIN 0.20 MM (0.008 IN).
5. GLASS BULB PERIPHERY MUST BE OPTICALLY DISTORTION FREE AXIALLY WITHIN THE INCLUDED ANGLES ABOUT POINT B.
6. KEY AND KEYWAY ARE OPTIONAL CONSTRUCTION. KEYWAY REQUIRED FOR AFTERMARKET ONLY.
7. MEASURED AT TERMINAL BASE. TERMINALS MUST BE PERPENDICULAR TO BASE AND PARALLEL WITHIN ±1.5°
8. DIAMETERS MUST BE CONCENTRIC WITHIN 0.20 MM (0.008 IN).
9. ABSOLUTE DIMENSION, NO TOLERANCE.
10. GLASS CAPSULE AND SUPPORTS SHALL NOT EXCEED THIS ENVELOPE AND SHALL NOT INTERFERE WITH INSERTION PAST THE LAMP'S KEY.

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

FIGURE 19-1

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



POINT B IS INTERSECTION OF PLANE B AND CENTERLINE OF UNDISTORTED GLASS TUBING

DIMENSION	INCHES	MILLIMETRES
IA	45° MIN	45° MIN
IB	52° MIN	52° MIN

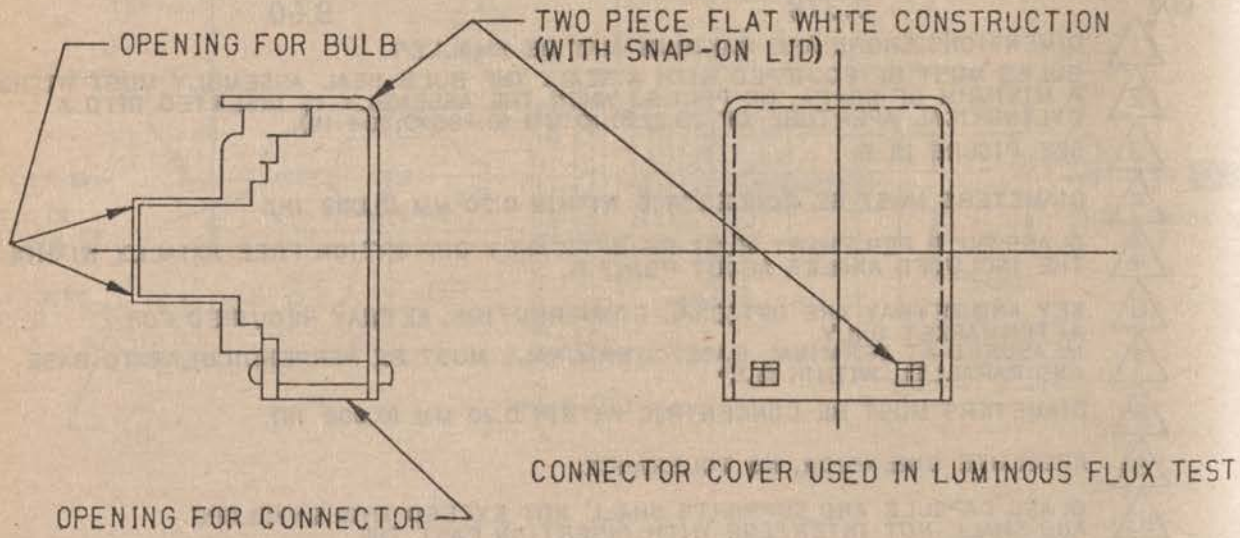
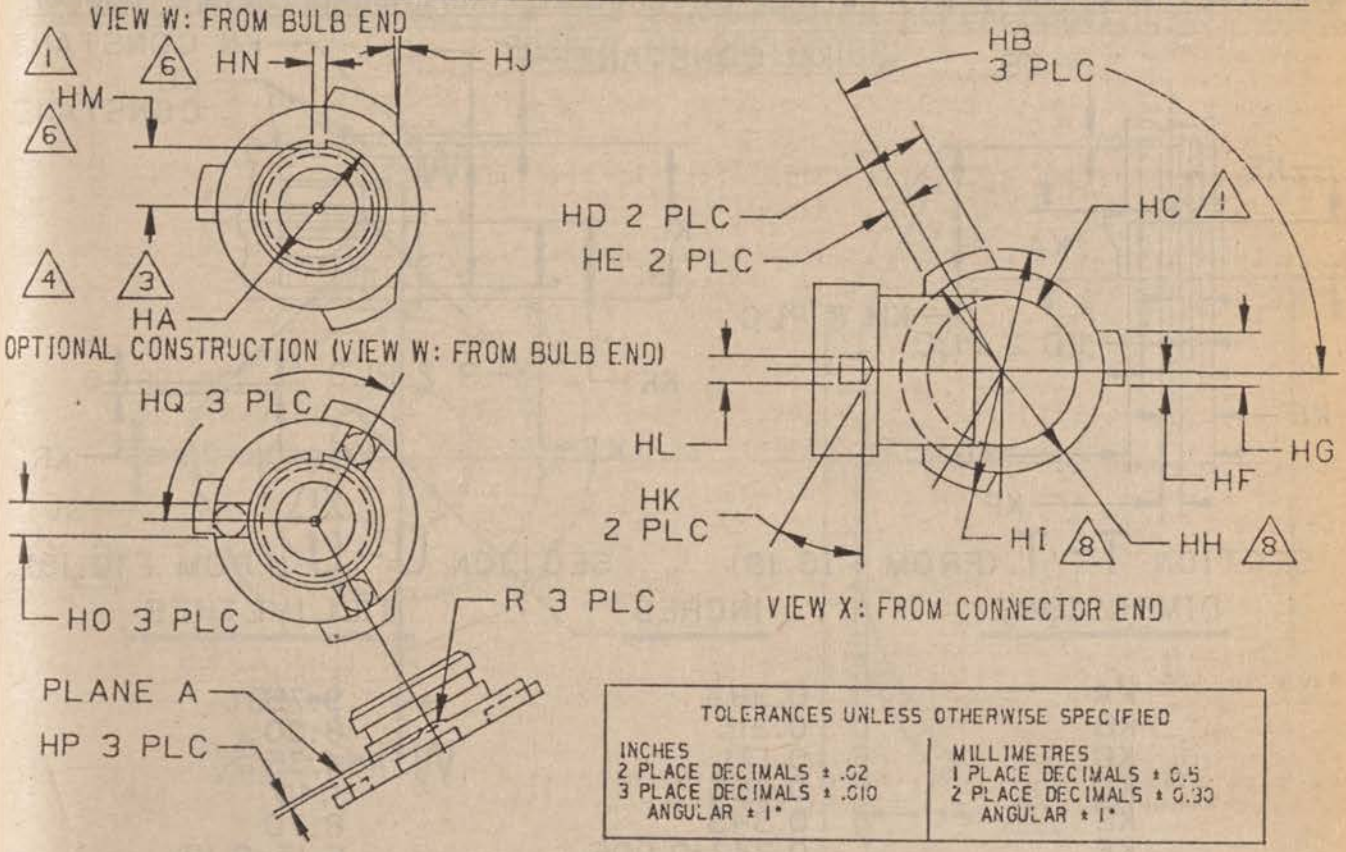


FIGURE 19-2

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE

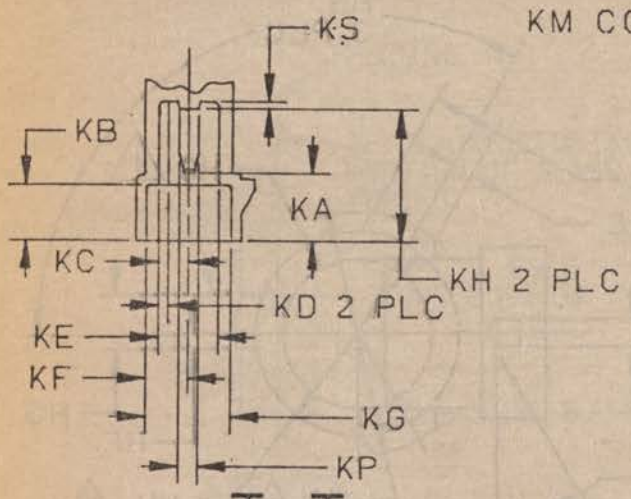


TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

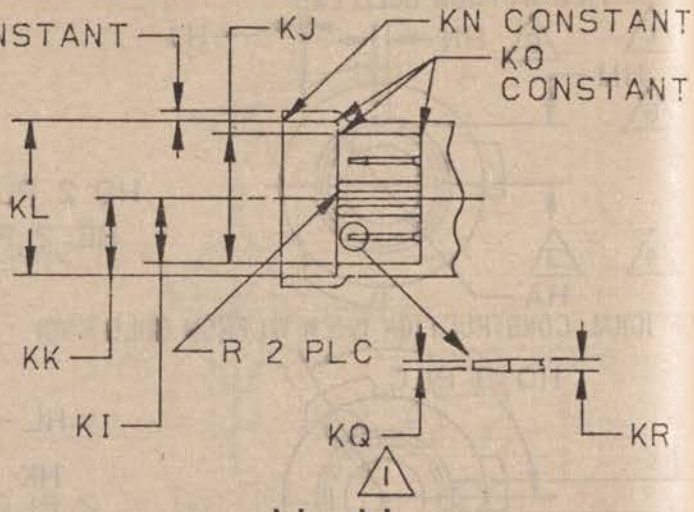
DIMENSIONS	INCHES	MILLIMETRES
HA	0.787±0.002 DIA	20.00±0.05 DIA
HB	120°±0°30	120°±0°30
HC	0.866 DIA	22.00 DIA
HD	0.394	10.00
HE	0.118	3.00
HF	0.079	2.00
HG	0.315	8.00
HH	1.181 DIA	30.00 DIA
HI	1.417 DIA	36.00 DIA
HJ	3°	3°
HK	30°	30°
HL	0.157	4.00
HM	0.35	8.9
HN	0.079±0.004	2.00±0.10
HO	0.20	5.0
HP	0.030	0.75
HQ	120° TYP	120° TYP

FIGURE 19-3

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION T-T (FROM FIG 19)



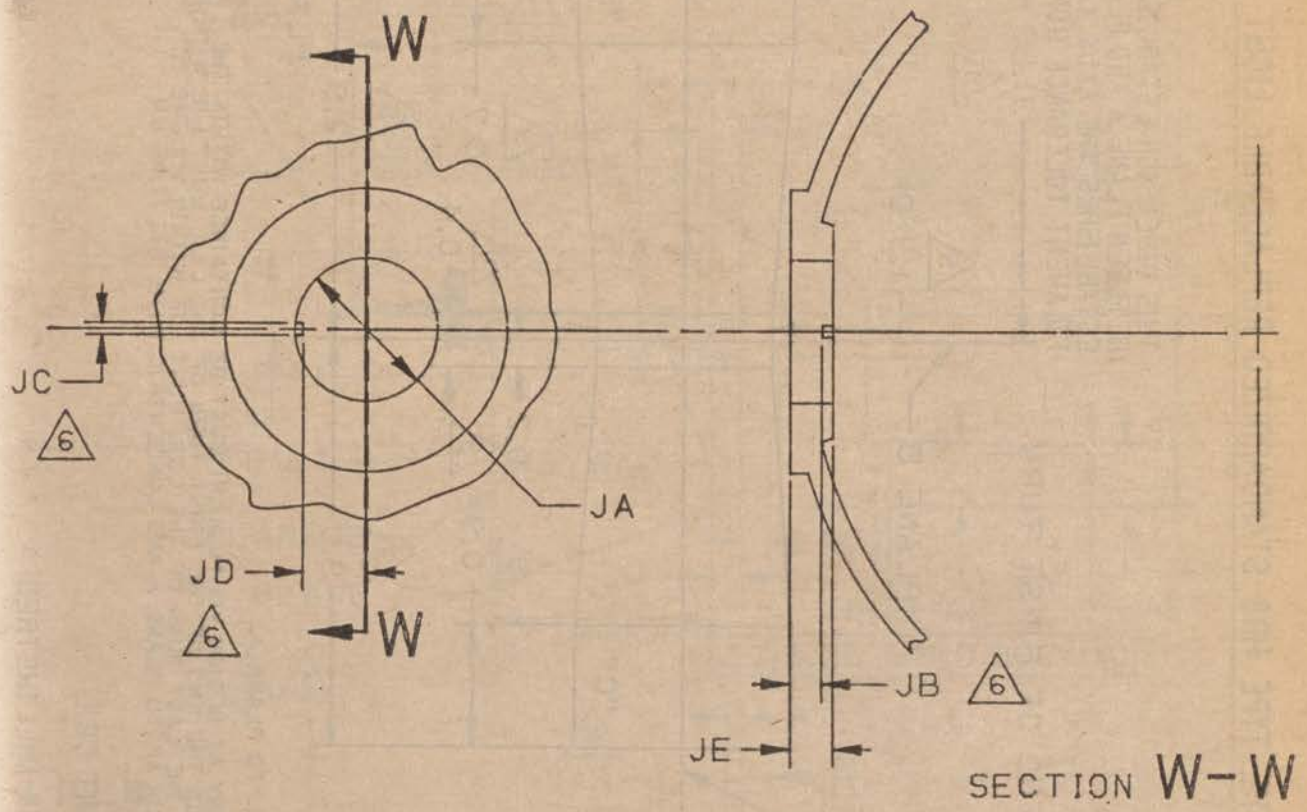
SECTION U-U (FROM FIG 19)

DIMENSIONS	INCHES	MILLIMETRES
KA	0.384	9.75
KB	0.315	8.00
KC	0.171	4.35
KD	0.055	1.40
KE	0.343	8.70
KF	0.242±0.006	6.15±0.15
KG	0.484	12.30
KH	0.748	19.00
KI	0.368±0.006	9.35±0.15
KJ	0.736	18.70
KK	0.439±0.006	11.15±0.15
KL	0.878	22.30
KM	0.059	1.50
KN	0.03 R	0.8 R
KO	0.016 R	0.40 R
KP	0.110±0.004	2.8±0.10
KQ	0.024	0.60
KR	0.033±0.001	0.83±0.03
KS	0.039 MIN	1.00 MIN

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

FIGURE 19-4

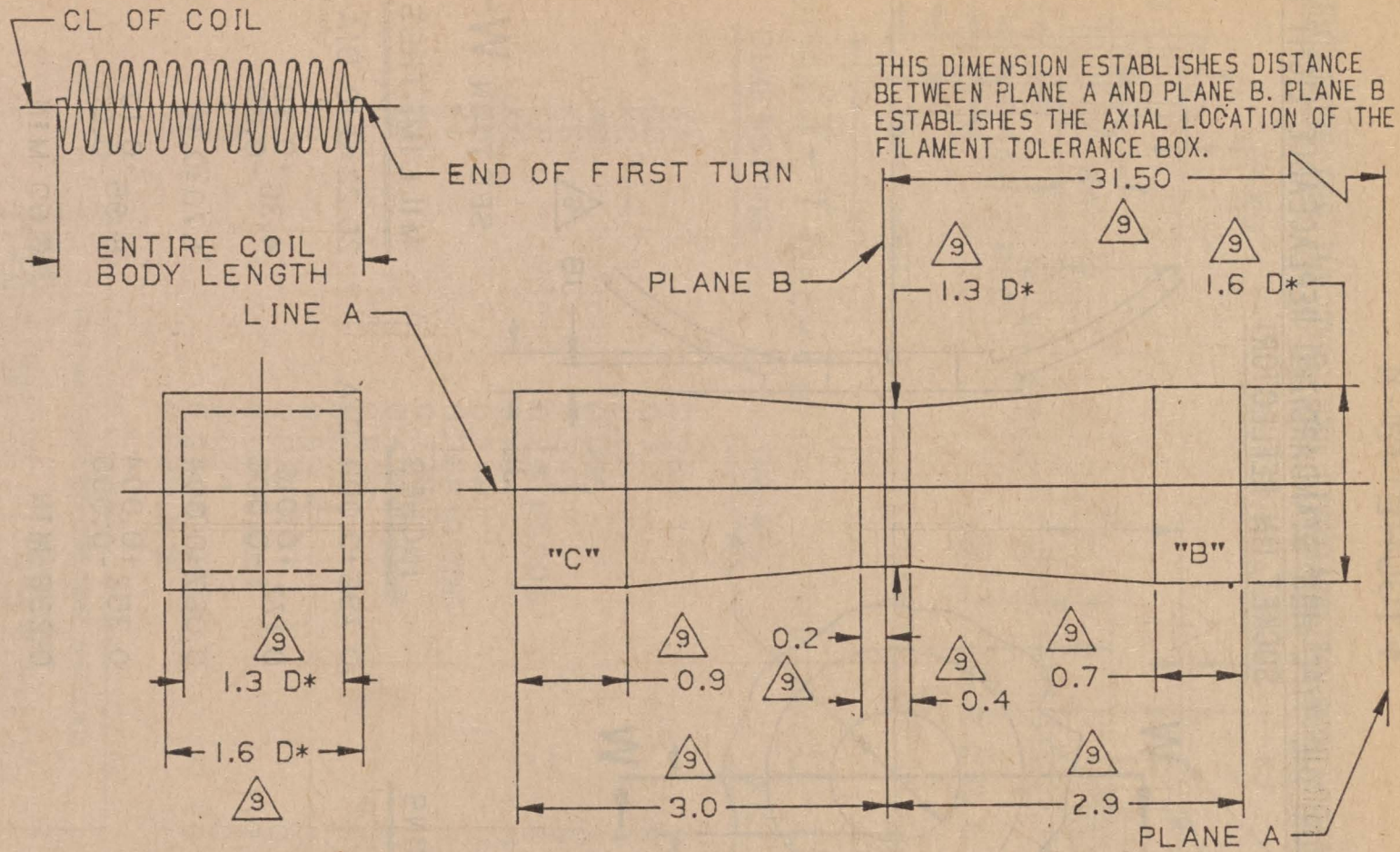
SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE SOCKET (IN REFLECTOR)



DIMENSIONS	INCHES	MILLIMETRES
JA	0.796±0.004 DIA	20.22±0.10 DIA
JB	$0.172^{+0.010}_{-0.000}$	$4.36^{+0.30}_{-0.00}$
JC	0.067±0.004	1.70±0.10
JD	$0.352^{+0.004}_{-0.000}$	$8.95^{+0.10}_{-0.00}$
JE	0.236 MIN	6.00 MIN

FIGURE 19-5

SPECIFICATIONS FOR THE TYPE HB3 STANDARDIZED REPLACEABLE LIGHT SOURCE



PLANE B IS PARALLEL TO PLANE A.

THE ENTIRE COIL BODY AT DESIGN VOLTS (12.8) MUST BE CONTAINED WITHIN THE VOLUME AS SPECIFIED. THE END OF THE FIRST TURN OF THE COIL MUST LIE WITHIN VOLUME "B" AND THE END OF THE LAST TURN OF THE COIL MUST LIE WITHIN VOLUME "C". LINE A IS PERPENDICULAR TO PLANE A AND CONCENTRIC WITH THE 17.46 MM DIAMETER OF THE BASE.

* D = DIAMETER OF FILAMENT COIL

DIMENSIONS SHOWN ARE IN MILLIMETRES

FIGURE 20

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

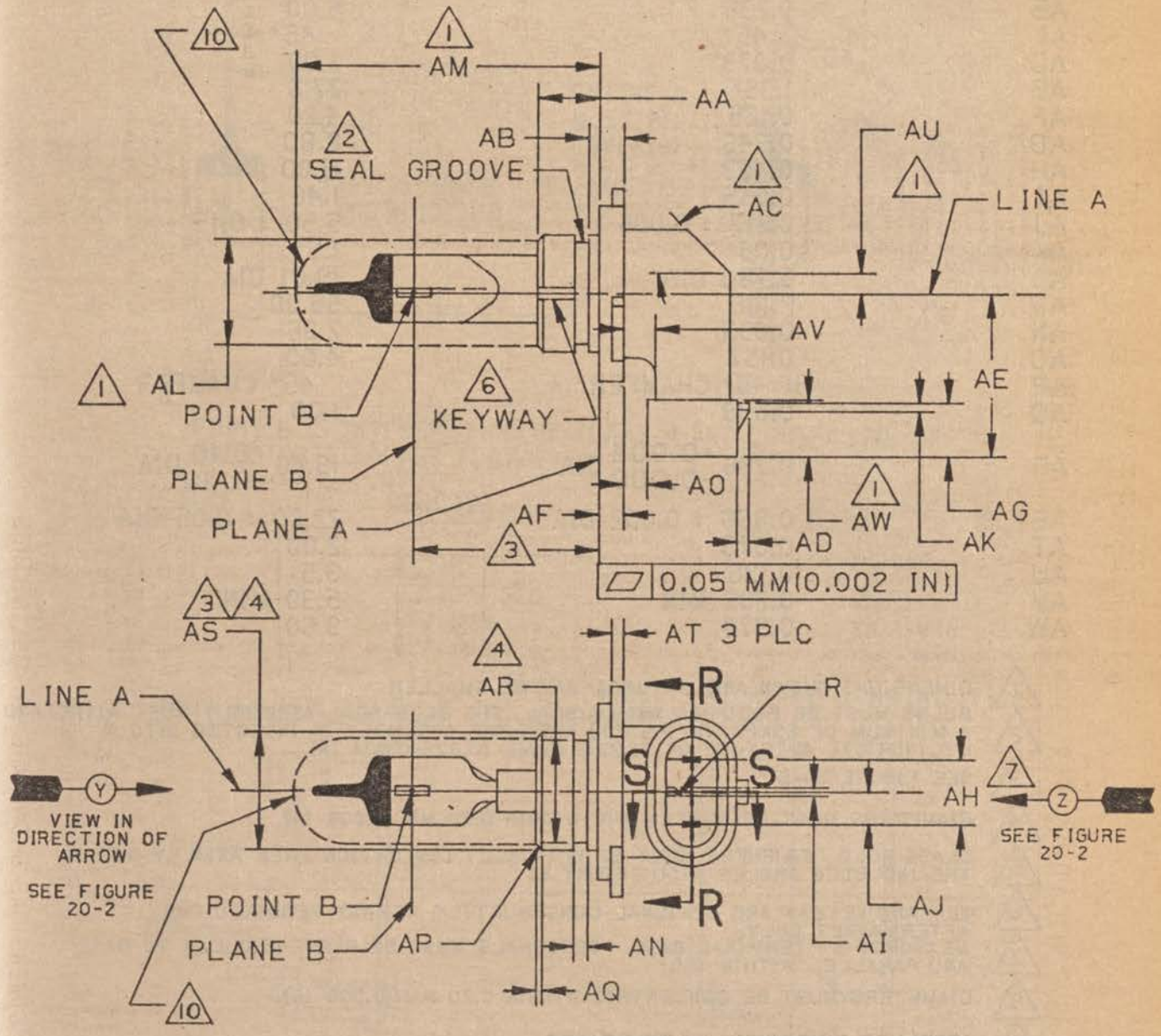


FIGURE 20 (CONT.)

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

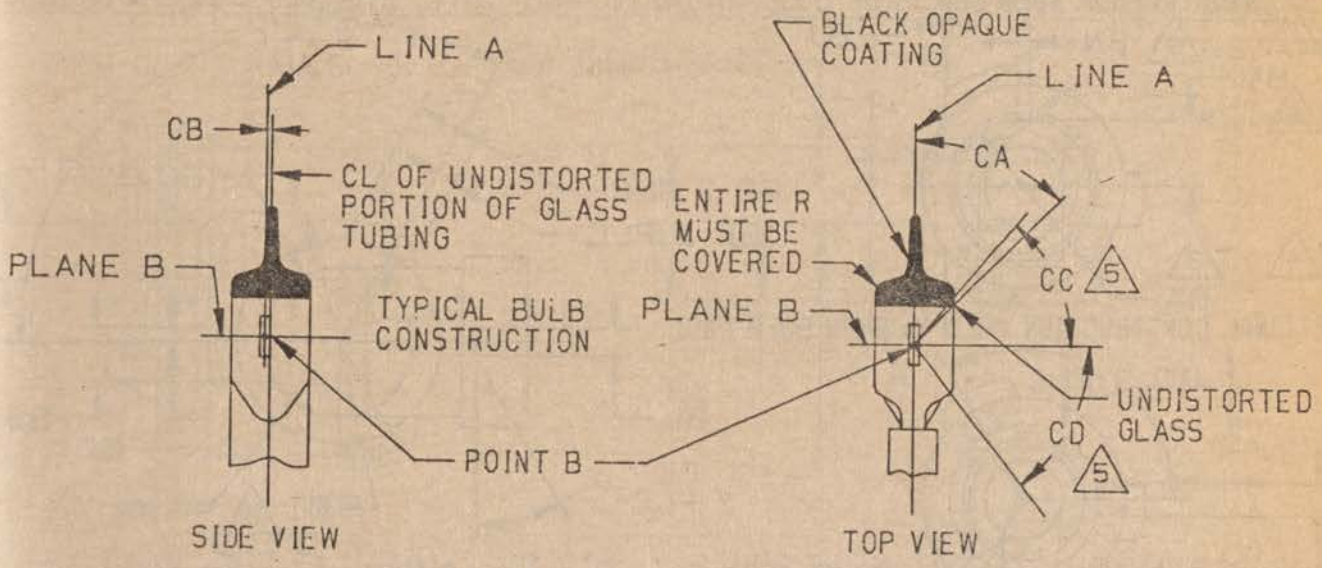
DIMENSION	INCHES	MILLIMETRES
AA	0.591 MAX / 0.217 MIN	15.00 MAX / 5.50 MIN
AB	0.236	6.00
AC	45°	45°
AD	0.079	2.00
AE	1.09	27.8
AF	0.165	4.20
AG	0.346	8.80
AH	0.433	11.00
AI	0.055	1.40
AJ	0.217 ± 0.006	5.50 ± 0.15
AK	0.06	1.5
AL	0.780 DIA	19.81 DIA
AM	2.165	55.00
AN	0.093	2.36
AO	0.157	4.00
AP	45° CHAMFER	45° CHAMFER
AQ	0.039	1.00
AR	$0.766^{+0.004}_{-0.000}$ DIA	$19.46^{+0.10}_{-0.00}$ DIA
AS	0.866 ± 0.002 DIA	22.00 ± 0.05 DIA
AT	0.079	2.00
AU	0.138	3.5
AV	0.209 MIN	5.30 MIN
AW	0.378	9.60

1. DIMENSIONS SHOWN ARE MAXIMUM-MAY BE SMALLER
2. BULBS MUST BE EQUIPPED WITH A SEAL. THE BULB-SEAL ASSEMBLY MUST WITHSTAND A MINIMUM OF 69kPA. (10 P.S.I.G.) WHEN THE ASSEMBLY IS INSERTED INTO A CYLINDRICAL APERTURE OF 22.22±0.10 MM (0.875±0.004 IN).
3. SEE FIGURE 20-5
4. DIAMETERS MUST BE CONCENTRIC WITHIN 0.20 MM (0.008 IN).
5. GLASS BULB PERIPHERY MUST BE OPTICALLY DISTORTION FREE AXIALLY WITHIN THE INCLUDED ANGLES ABOUT POINT B.
6. KEY AND KEYWAY ARE OPTIONAL CONSTRUCTION. KEYWAY REQUIRED FOR AFTERMARKET ONLY.
7. MEASURED AT TERMINAL BASE. TERMINALS MUST BE PERPENDICULAR TO BASE AND PARALLEL WITHIN ±1.5°
8. DIAMETERS MUST BE CONCENTRIC WITHIN 0.20 MM (0.008 IN).
9. ABSOLUTE DIMENSION, NO TOLERANCE.
10. GLASS CAPSULE AND SUPPORTS SHALL NOT EXCEED THIS ENVELOPE.

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

FIGURE 20-1

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



POINT B IS INTERSECTION OF PLANE B AND CENTERLINE OF UNDISTORTED GLASS TUBING

DIMENSION	INCHES	MILLIMETRES
CA	45°±5°	45°±5°
CB	0.030±0.020	0.75±0.50
CC	50° MIN	50° MIN
CD	52° MIN	52° MIN

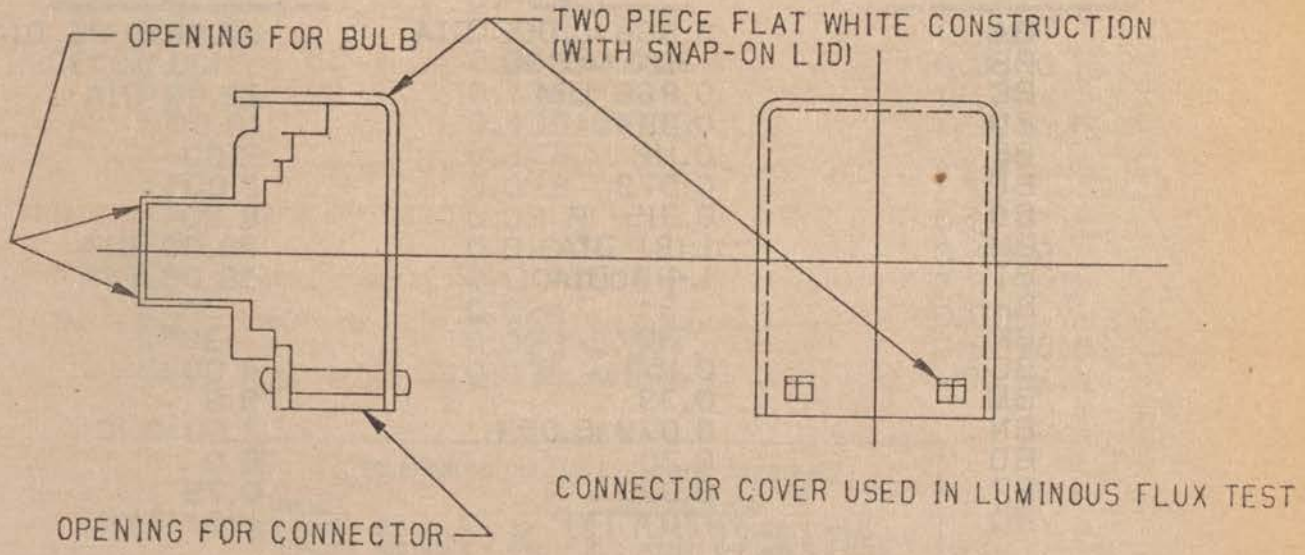
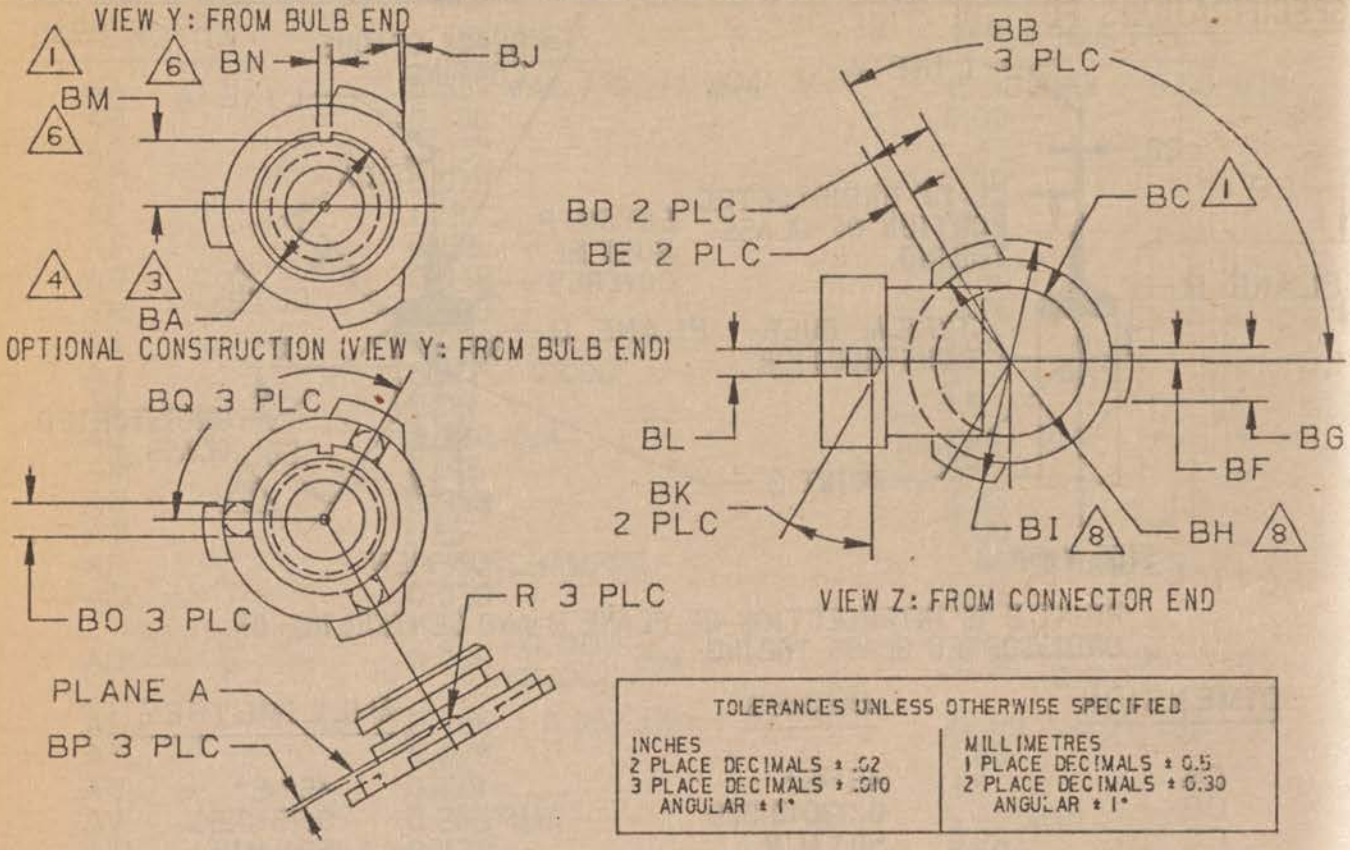


FIGURE 20-2

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE

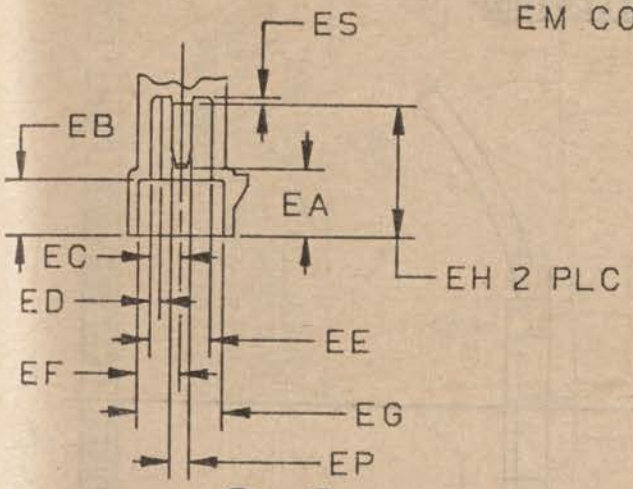


TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

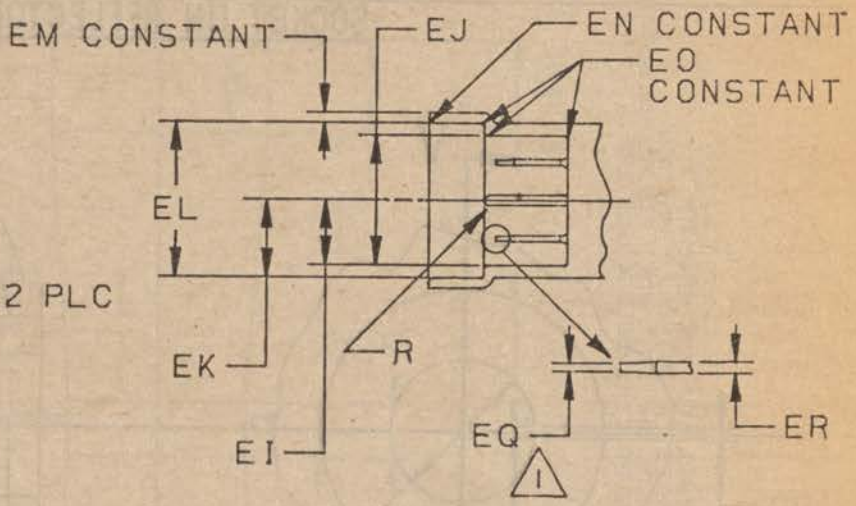
DIMENSIONS	INCHES	MILLIMETRES
BA	0.866±0.002 DIA	22.00±0.05 DIA
BB	120°±0°30	120°±0°30
BC	0.866 DIA	22.00 DIA
BD	0.394	10.00
BE	0.118	3.00
BF	0.079	2.00
BG	0.315	8.00
BH	1.181 DIA	30.00 DIA
BI	1.417 DIA	36.00 DIA
BJ	3°	3°
BK	30°	30°
BL	0.157	4.00
BM	0.39	9.9
BN	0.079±0.004	2.00±0.10
BO	0.20	5.0
BP	0.030	0.75
BQ	120° TYP	120° TYP

FIGURE 20-3

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



SECTION S-S (FROM FIG 20)



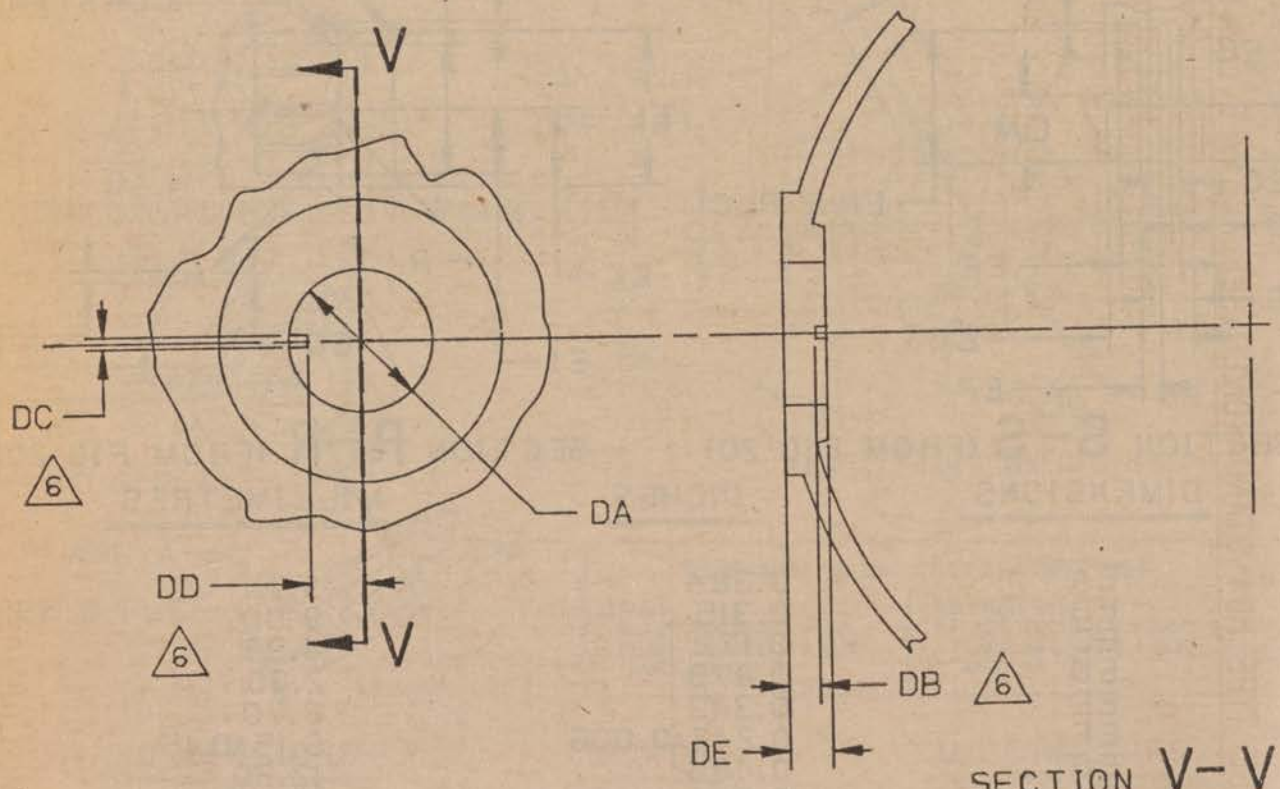
SECTION R-R (FROM FIG 20)

DIMENSIONS	INCHES	MILLIMETRES
EA	0.384	9.75
EB	0.315	8.00
EC	0.171	4.35
ED	0.079	2.00
EE	0.343	8.70
EF	0.242 ±0.006	6.15 ±0.15
EG	0.484	12.30
EH	0.748	19.00
EI	0.368 ±0.006	9.35 ±0.15
EJ	0.736	18.70
EK	0.439 ±0.006	11.15 ±0.15
EL	0.878	22.30
EM	0.059	1.50
EN	0.03 R	0.8 R
EO	0.016 R	0.40 R
EP	0.110 ±0.004	2.8 ±0.10
EQ	0.024	0.60
ER	0.033 ±0.001	0.83 ±0.03
ES	0.039 MIN	1.00 MIN

TOLERANCES UNLESS OTHERWISE SPECIFIED	
INCHES 2 PLACE DECIMALS ± .02 3 PLACE DECIMALS ± .010 ANGULAR ± 1°	MILLIMETRES 1 PLACE DECIMALS ± 0.5 2 PLACE DECIMALS ± 0.30 ANGULAR ± 1°

FIGURE 20-4

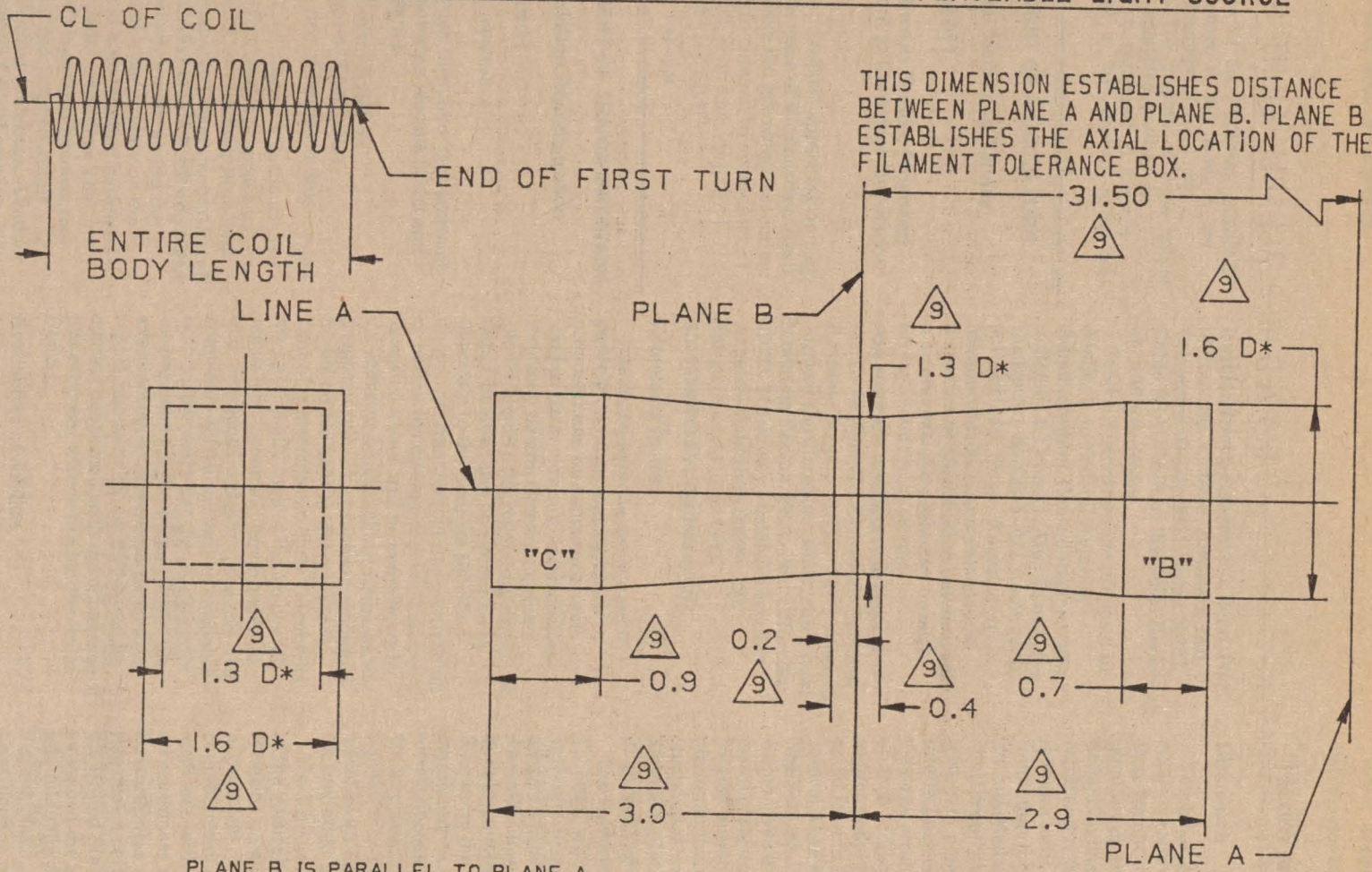
SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE SOCKET (IN REFLECTOR)



DIMENSIONS	INCHES	MILLIMETRES
DA	0.875±0.004 DIA	22.22±0.10 DIA
DB	$0.172^{+0.010}_{-0.000}$	$4.36^{+0.30}_{-0.00}$
DC	0.067±0.004	1.70±0.10
DD	$0.392^{+0.004}_{-0.000}$	$9.95^{+0.10}_{-0.00}$
DE	0.236 MIN	6.00 MIN

FIGURE 20-5

SPECIFICATIONS FOR THE TYPE HB4 STANDARDIZED REPLACEABLE LIGHT SOURCE



PLANE B IS PARALLEL TO PLANE A.

THE ENTIRE COIL BODY AT DESIGN VOLTS (12.8) MUST BE CONTAINED WITHIN THE VOLUME AS SPECIFIED. THE END OF THE FIRST TURN OF THE COIL MUST LIE WITHIN VOLUME "B" AND THE END OF THE LAST TURN OF THE COIL MUST LIE WITHIN VOLUME "C". LINE A IS PERPENDICULAR TO PLANE A AND CONCENTRIC WITH THE 19.46 MM DIAMETER OF THE BASE.

*D = DIAMETER OF FILAMENT COIL

DIMENSIONS SHOWN ARE IN MILLIMETRES

BILLING CODE 4910-59-C

Issued on April 28, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-9847 Filed 4-29-86; 11:03 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 51, No. 85
Friday, May 2, 1986

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 911

Limes Grown in Florida; Proposed Amendment to Container Regulation

Correction

In FR Doc. 86-9037 appearing on page 15349 in the issue of Wednesday, April 23, 1986, make the following correction:

In the third column, in amendatory instruction 2, sixth line, "(a)(2)(iv)" should read "(a)(2)(vi)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-5-AD]

Airworthiness Directive; Government Aircraft Factories Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Government Aircraft Factories (GAF) Models N22B and N24A airplanes which would require the installation of a guard plate on the structure and a low friction button on the rudder pedal pivot pins. The proposed AD is needed because the rudder pedal has jammed at full deflection in some instances. A rudder pedal jammed at full deflection could lead to loss of directional control.

DATE: Comments must be received on or before June 5, 1986.

ADDRESSES: GAF Service Bulletin NMD-27-34, dated October 21, 1985, applicable to this AD may be obtained from Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207; Telephone 03-647-3111; Telex 30252; Cable BEAUFAIR or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of Regional Counsel, Attention: Rules Docket No. 86-CE-5-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Domich, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1143.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-5-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been an AD (AD/GAF-N22/51) received from the Australian Department of Aviation stating that jamming on the rudder pedals at full deflection has occurred on GAF Models N22B and N24A airplanes. The manufacturer has investigated and found that this happens when the pedals are adjusted at or near full aft position concurrently with landing on rough terrain or nose wheel shimmy. The interference occurs between the sidewall structure and the outboard end of each rudder pedal pivot pin. Since the rudder pedal jammed at full deflection could lead to loss of airplane direction control, GAF has issued Service Bulletin NMD-27-34 dated October 21, 1985, which gives instruction for installing a guard plate on the structure and a low friction button on the rudder pedal pivot pin to eliminate the jamming. GAF compliance with the provisions of Service Bulletin NMD-27-34 is recorded in aircraft log books as Mod N642.

The Australian Department of Aviation, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Australia, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Australian regulations, this action has the same effect as an AD on airplanes certificated for operation in the United States.

The FAA relies upon the certification of the Australian Department of Aviation combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with applicable United States airworthiness requirements and the airworthiness conformity for products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Service Bulletin NMD-27-34 and the mandatory classification of this service bulletin by the Australian Department of Aviation. Based on the foregoing, the FAA believes that the condition addressed by Service Bulletin NMD-27-34 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD is

applicable to GAF N22B and N24A airplanes and would require installation of a manufacturer supplied kit in accordance with GAF Service Bulletin NMD–27–34 to allow jam free operation of the rudder pedals. There are approximately 22 United States registered airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $320 per airplane. The kit is furnished by GAF at no cost. The cost to the private section is estimated to be $7,040. Few, if any small entities own the affected airplanes. The cost of compliance is so minimal that it would not impose a significant economic burden on any such owner. Therefore, I certify that this action (1) is not major under provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aviation, Aircraft.

The Proposed Amendment

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

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

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

2. By adding the following new AD:

Government Aircraft Factories (GAF): Applies to Models N22B and N24A airplanes, (all serial numbers) certificated in any category unless Service Bulletin NMD–27–34 (Mod N642) has been incorporated.

Compliance: Required within 100 hours time-in-service after the effective date of this AD or one calendar year after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent jamming of the rudder pedals accomplish the following:

(a) Modify the airplane sidewall structure and rudder pedals in accordance with Paragraph 2, "Accomplishment Instructions" of GAF Service Bulletin NMD–27–34 dated October 21, 1985, or later equivalent approved by the Manager, Western Aircraft Certification Office.

(b) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Western Aircraft Certification Office, ANM–170W, Northwest Mountain Region, FAA, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Government Aircraft Factories, 226 Lormier Street, Fisherman's Bend, Port Melbourne, Victoria, Australia 3207, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 21, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–9829 Filed 5–1–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–50–80]

Income Taxes; Procedure for Electing $10 Million Limitation on Small Issues of Industries Development Bonds; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking published in the **Federal Register** for June 22, 1982 (47 FR 26854) that proposed to revise the procedures for electing the $10 million limitation for exempt small issues of industrial development bonds and for filing supplemental statements of capital expenditures.

DATE: The withdrawal of this notice of proposed rulemaking is effective on May 1, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Telephone: (202) 566–3459).

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1982, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(6)(D) of the Internal Revenue Code of 1954 (47 FR 26854). These amendments were proposed to make revisions in the manner of electing the $10 million limitation for exempt small issues of industrial development bonds and for filing supplemental statements of capital expenditures. Several written comments responding to this notice were received, but no public hearing was requested or held. After consideration of all comments regarding the proposed amendments, it was determined that the proposed rules relating to the time and manner of filing small issue elections and capital expenditure statements were inappropriate. Accordingly, those proposed amendments are withdrawn by this document.

Drafting Information

The principal author of this document is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, the proposed amendments to 26 CFR Part 1 relating to the procedure for electing the $10 million limitation for exempt small issues of industrial development bonds and for filing supplemental statements of capital expenditures, published in the **Federal Register** for June 22, 1982 (47 FR 26854), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–9952 Filed 5–1–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends to September 15, 1986, the comment period for the notice of proposed rulemaking concerning the consolidation of the rules

of the Minerals Management Service (MMS) that govern oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The extension was requested by several commenters due to the extensive nature of the rulemaking.

DATES: Comments must be hand-delivered or postmarked no later than September 15, 1986.

ADDRESSES: Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Room 6A110, Reston, Virginia 22901; Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, Telephone: (703) 648–7724.

SUPPLEMENTARY INFORMATION: On March 18, 1986, MMS published a notice of proposed rulemaking in the **Federal Register** (51 FR 9316) to consolidate into one document the currently multitiered rules that govern oil, gas, and sulphur operations in the OCS. The proposed rule restructures MMS requirements currently contained in regulations at 30 CFR Part 250 and OCS Orders for each of the four OCS Regions. Due to the extensive nature of the rulemaking, commenters have requested additional time to analyze the proposed rule and to prepare comments. The MMS considers the additional time to be warranted and is extending the comment period. The original comment period was through June 16, 1986. This notice extends the comment period through September 15, 1986.

Dated: April 21, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86–9884 Filed 5–1–86; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

36 CFR Part 62

National Natural Landmarks Program; National Significance Criteria

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This revision to the National Natural Landmarks Program national significance criteria is proposed to clarify the language and sharpen the definition of national significance. The revised criteria will better enable the National Park Service to evaluate additions to the National Registry of Natural Landmarks and better communicate the concept of national significance to the public. Since many persons and organizations seek such recognition for sites they own or administer, a better understanding of our definition of the concept will help them recognize why few sites qualify, and also assist our contractors in providing us with information we need to make good judgements.

DATES: Written comments, suggestions or objections will be accepted until—June 2, 1986.

ADDRESS: Comments should be addressed to: Arthur L. Stewart, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9500.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stewart, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, D.C. 20013–7127, (202) 343–9500.

SUPPLEMENTARY INFORMATION

Background

The Secretary of the Interior established the Natural Landmarks Program in 1962 as a natural areas survey to identify and encourage the preservation of features that best illustrate the ecological and geological character of the United States, to enhance the educational and scientific value of sites thus identified, to strengthen public appreciation of natural history, and to foster wider support for conservation of the Nation's natural heritage.

Potential National Natural Landmarks are identified primarily through inventory studies conducted for the National Park Service, but also through recommendations received from Federal agencies, State natural heritage programs, and other sources. Recommended areas are surveyed in the field and evaluated with respect to selection criteria by expert natural scientists. If an area is judged nationally significant, it is proposed to the Secretary of the Interior for designation as a National Natural Landmark. Areas so designated are listed on the National Registry of Natural Landmarks, which now includes 559 sites in 48 States, 3 territories, and the Commonwealth of Puerto Rico. Additions to the Registry are published annually in the **Federal Register.**

Natural landmark designation is not a land withdrawal and affects neither the ownership of a site nor its use. Rather, it is a means of public recognition employed by the Secretary to encourage the preservation, well-informed management, and consideration in public and private planning efforts of nationally significant natural areas without acquisition by the Federal Government.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

Drafting of this regulation was done by National Natural Landmarks Program staff, in consultation with other National Park Service employees, outside scientists, representatives of national conservation organizations, and others.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a significant economic effect on a substantial number of small entities as per the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that no costs should result for any small entity.

The rule does not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1981.

List of Subjects in 36 CFR Part 62

Natural resources.

PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

For the reasons set out in the preamble, it is proposed to amend 36 CFR Part 62 as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: Sec. 1, Pub. L. 74–292, 49 Stat. 666 (16 U.S.C. 461 et seq); Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

2. Section 62.2 is amended by revising the definition "National Significance" to read as follows:

§ 62.2 Definitions.

* * * * *

"National Significance" denotes a site which exemplifies one of a natural region's characteristic biotic or geologic features which has been evaluated, using Department of Interior standards,

as one of the best known examples of that feature.

* * * * *

3. Section 62.5 is revised to read as follows:

§ 62.5 National natural landmark criteria.

(a) *Introduction:* (1) "National Significance" denotes a site which exemplifies one of a natural region's characteristic biotic or geologic features which has been evaluated, using Department of Interior standards, as one of the best known examples of that feature. Such features include terrestrial and aquatic ecosystems; geologic structures, exposures, and landforms that record active geologic processes or portions of earth history; and fossil evidence for biological evolution. Because the general character of natural diversity is regionally distinct according to broad patterns of physiography, many types of natural features lie wholly within one of the 33 physiographic provinces of the Nation. For that reason, and because no uniform, nationally applicable classification schemes for biotic communities or geologic features have gained wide acceptance and use in lieu of other classification schemes by the majority of organizations involved in natural area inventory activities, individual classification systems developed for regional inventory studies are used to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biotic communities or individual geologic, paleontologic or physiographic features, most of which are mappable at the Earth's surface at scales on the order of 1:25,000 or are traceable in the subsurface. Nearly two-thirds of all National Natural Landmarks range in size between about 30 and 2,000 hectares (about 8 and 5,000 acres), but larger and smaller sites also occur owing to the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria:* (1) The following criteria form the guidelines used to evaluate the relative quality of sites as examples of regionally characteristic natural features. Primary criteria relating to a specific type of natural feature from the principal basis for selection and must be met for a site to be considered for National Natural Landmark designation. Secondary criteria relating to significant features or qualities in addition to the principal feature are provided for additional consideration when two or more sites are found to meet the primary criteria.

(2) Primary Criteria:

(i) Illustrative Character: A site exhibits an unusual combination of well-developed component features that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. What is sought, therefore, is not necessarily the statistically representative, but rather the unusually illustrative.

Example: An alpine glacier, which exhibits classic shape, an unusual number of glaciologic structures like crevasses, and well-developed bordering moraine sequences.

(ii) Present Condition: A site has received less human disturbance than other examples.

Example: A large beech-maple forest, only a small portion of which has been disturbed by logging.

(3) Secondary Criteria:

(i) Diversity: A site, in addition to its primary natural feature, contains high quality examples of other ecological and/or geological features.

Example: A composite volcano, which also illustrates geothermal phenomena.

(ii) Rarity: A site, in addition to its primary natural feature, contains a rare geological or paleontological feature or biotic community, or provides high quality habitat for one or more rare, threatened, or endangered species.

Example: Badlands, which also are composed of strata containing rare fossils.

(iii) Value for Science and Education: A site is associated with a significant scientific discovery or concept, possesses an exceptionally extensive and long-term record of onsite research, or offers unusual opportunities for public interpretation of the natural history of the United States.

Example: A dunes landscape, which was the subject of pioneering studies that first recognized the process of ecological succession.

Dated: February 26, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9962 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 4

Nomenclature and Descriptive Terms for Mental Disorders

AGENCY: Veterans Administration.

ACTION: Proposed rules.

SUMMARY: The Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III) changed the diagnostic terms for many mental disorders. The proposed changes to the Schedule for Rating Disabilities (38 CFR Part 4) are designed to comport with the diagnostic terms used in DSM-III.

DATES: Comments must be received on or before June 2, 1986. This rule is proposed to be effective 30 days following date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Services, Department of Veterans Benefits, (202) 389-3005.

SUPPLEMENTARY INFORMATION: Under the heading of Psychotic Disorders, DSM-III changed the following diagnoses: Schizophrenia, hebephrenic type, changed to schizophrenia, disorganized type—schizophrenia, unspecified type, changed to schizophrenia residual type, schizoaffective disorder, and other and unspecified type—manic depressive illness, changed to bipolar disorder—paranoid state changed to paranoid disorder-involutional melancholia or paranoid state changed to major depression or paranoia—psychosis, unspecified, changed to atypical psychosis—schizophrenia, simple type is deleted as a ratable entity as such is now considered a personality disorder.

The heading of Organic Brain Disorder is changed to Organic Mental Disorders. Under this heading, organic brain syndromes are changed to dementia, and the distinction between psychotic and non-psychotic dementia is deleted.

Under the heading of Psychoneurotic Disorders, the majority of diagnostic entities were referred to as neuroses. The term "neurosis" is changed to "disorder."

The heading of Psychophysiologic Disorders is changed to read Psychological Factors Affecting Physical Conditions, and the individual diagnoses under this heading are changed accordingly.

The Schedule for Rating Disabilities (38 CFR Part 4) is amended to reflect the changes made in DSM–III.

The descriptive adjectives used in the Schedule for Rating Disabilities which characterize the degree of industrial and social impairment for mental disorders are being changed to uniformly describe the degree of impairment as "total" for 100%, "severe" for 70%, "extensive" for 50%, "definite" for 30% and "mild" for 10%. The descriptive terms stated above do not necessarily refer to the severity of the disease, but refer to the impairment such disease entity has on the social and industrial activity of the veteran. It should be noted that disability evaluations assigned under the Schedule for Rating Disabilities are based on the average impairment of earning capacity resulting from a specific disease or injury. The uniform use of the descriptive adjectives are not intended to raise or reduce evaluations for mental disorders, but are designed to reflect consistency in describing social and industrial impairment.

The Administrator hereby certifies that this regulatory amendment will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. The reason for this certification is that this amendment changes certain terminology used in the schedule under which the VA rates or evaluates the disabilities of individual veterans. These regulations are in no way directed toward, and impose no regulatory burdens upon, small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not 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.

List of Subjects in 38 CFR Part 4

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.109 and 64.110)

Approved: April 2, 1986.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

38 CFR Part 4, SCHEDULE FOR RATING DISABILITIES is amended as follows:

PART 4—[AMENDED]

1. Section 4.125 is revised to read as follows:

§ 4.125 General considerations.

The field of mental disorders represents the greatest possible variety of etiology, chronicity and disabling effects, and requires differential consideration in these respects. These sections under mental disorders are concerned with the rating of psychiatric conditions, specifically psychotic and psychoneurotic disorders and psychological disorders affecting physical conditions as well as organic mental disorders. Advances in modern psychiatry during and since World War II have been rapid and profound and have extended to the entire medical profession a better understanding of an deeper insight into the etiological factors, psychodynamics, and psychopathological changes which occur in mental disease and emotional disturbances. The psychiatric nomenclature employed is based upon the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM–III), American Psychiatric Association. This nomenclature has been adopted by the Department of Medicine and Surgery of the Veterans Administration. It limits itself to the classification of disturbances of mental functioning. To comply with the fundamental requirements for rating psychiatric conditions, it is imperative that rating personnel familiarize themselves thoroughly with this manual (American Psychiatric Association Manual, 1980 Edition) which will be hereinafter referred to as the APA manual. (38 U.S.C. 210(c))

2. Section 4.126 is revised to read as follows:

§ 4.126 Substantiation of diagnosis.

It must be established first that a true mental disorder exists. The disorder will be diagnosed in accordance with the APA manual. A diagnosis not in accord with this manual is not acceptable for rating purposes and will be returned through channels to the examiner. Normal reactions of discouragement, anxiety, depression, and self-concern in the presence of physical disability, dissatisfaction with work environment, difficulties in securing employment, etc., must not be accepted by the rating board as indicative of psychoneurosis. Moreover mere failure of social or industrial adjustment or the presence of numerous complaints should not, in the absence of definite symptomatology typical of a psychoneurotic or psychological disorder, become the acceptable basis of a diagnosis in this field. It is the responsibility of rating boards to accept or reject diagnoses shown on reports of examination. If a diagnosis is not supported by the findings shown on the examination report, it is incumbent upon the board to return the report for clarification. (38 U.S.C. 210(c))

3. Section 4.127 is revised to read as follows:

§4.127 Mental deficiency and personality disorders.

Mental deficiency and personality disorders will not be considered as disabilities under the terms of the schedule. Attention is directed to the outline of personality disorders in the APA manual. Formal psychometric tests are essential in the diagnosis of mental deficiency. Brief emotional outbursts or periods of confusion are not unusual in mental deficiency or personality disorders and are not acceptable as the basis for a diagnosis of psychotic disorder. However, properly diagnosed superimposed psychotic disorders developing after enlistment, i.e., mental deficiency with psychotic disorder, or personality disorder with psychotic disorder, are to be considered as disabilities analogous to, and ratable as, schizophrenia, unless otherwise diagnosed. (38 U.S.C. 210 (c))

4. Section 4.128 is revised to read as follows:

§ 4.128 Change of diagnosis.

Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in a prior diagnosis, or possibly a disease entity independent of the service-connected psychiatric disorder. (38 U.S.C. 210 (c))

5. Section 4.129 is revised to read as follows:

§ 4.129 Social inadaptability.

Social integration is one of the best evidences of mental health and reflects the ability to establish (together with the desire to establish) healthy and effective interpersonal relationships. Poor contact with other human beings may be an index of emotional illness. However, in evaluating impairment resulting from the

ratable psychiatric disorders, social inadaptability is to be evaluated only as it affects industrial adaptability. The principle of social and industrial inadaptability as the basic criterion for rating disability from the mental disorders contemplates those abnormalities of conduct, judgment, and emotional reactions which affect economic adjustment, i.e., which produce impairment of earning capacity.

6. Section 4.130 is revised to read as follows:

§ 4.130 Evaluation of psychiatric disability.

The severity of disability is based upon actual symptomatology, as it affects social and industrial adaptability. Two of the most important determinants of disability are time lost from gainful work and decrease in work efficiency. The rating board must not underevaluate the emotionally sick veteran with a good work record, nor must it overevaluate his or her condition on the basis of a poor work record not supported by the psychiatric disability picture. It is for this reason that great emphasis is placed upon the full report of the examiner, descriptive of actual symptomatology. The record of the history and complaints is only preliminary to the examination. The objective findings and the examiner's analysis of the symptomatology are the essentials. The examiner's classification of the disease as "mild," "extensive," or "severe" is not determinative of the degree of disability, but the report and the analysis of the symptomatology and the full consideration of the whole history by the rating agency will be. In evaluating disability from psychotic disorders it is necessary to consider, in addition to present symptomatology or its absence, the frequency, severity, and duration of previous psychotic periods, and the veteran's capacity for adjustment during periods of remission. Repeated psychotic periods, without long remissions, may be expected to have a sustained effect upon employability until elapsed time in good remission and with good capacity for adjustment establishes the contrary. Ratings are to be assigned which represent the impairment of social and industrial adaptability based on all of the evidence of record. Evidence of material improvement in psychotic disorders disclosed by field examination or social survey should be utilized in determinations of competency, but the fact will be borne in mind that a person who has regained competency may still be unemployable, depending upon the level of his or her disability as shown by recent examinations and other evidence of record. (38 U.S.C. 210(c)

7. Section 4.131 is revised to read as follows:

§ 4.131 Mental disorders due to psychic trauma.

Certain mental disorders having their onset as an incident of battle or enemy action, or following bombing, shipwreck, imprisonment, exhaustion, or prolonged operational fatigue may at the outset be designated as gross stress disorder, "combat fatigue," "exhaustion," or any one of a number of special terms. These conditions may clear up entirely, permitting return to full or limited duty, or they may persist as one of the recognized mental disorders, particularly generalized anxiety disorder, or recur as post-traumatic stress disorder. If the mental disorder is sufficiently severe to warrant discharge from service, a minimum rating of 50 percent will be assigned with an examination to be scheduled within 6 months from discharge. (38 U.S.C. 210(c))

8. The four rating tables contained in § 4.132 are revised to read as follows:

§ 4.132 Schedule of ratings—mental disorders.

PSYCHOTIC DISORDERS

	Rating
9200 Removed.	
9201 Schizophrenia, disorganized type.	
9202 Schizophrenia, catatonic type.	
9203 Schizophrenia, paranoid type.	
9204 Schizophrenia, undifferentiated type.	
9205 Schizophrenia, residual type; schizoaffective disorder; other and unspecified types.	
9206 Bipolar disorder, manic, depressed, or mixed.	
9207 Major depression with psychotic features.	
9208 Paranoid disorders (specify type).	
9209 Major depression with melancholia.	
9210 Atypical psychosis.	
General Rating Formula for Psychotic Disorders:	
Active psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce total social and industrial inadaptability	100
With lesser symptomatology such as to produce severe impairment of social and industrial adaptability	70
Extensive impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Mild impairment of social and industrial adaptability	10
Psychosis in full remission	0
Convalescent rating in psychotic disorders: Upon regular discharge or release to non-bed care from a hospital where a beneficiary has been under care and treatment for a continuous period in the hospital of not less than 6 months, an open rating of 100 percent will be continued for 6 months. A Veterans Administration examination is mandatory at the expiration of the 6-month period, after which the condition will be rated in accordance with the degree of disability shown. Where the beneficiary has been under hospital care and treatment for less than 6 months and is not ratable at 100 percent under the rating formula, consideration should be given to § 4.29.	

ORGANIC MENTAL DISORDERS

	Rating
9300 Delirium Associated with infection, trauma, circulatory disturbance, etc.	
NOTE: Acute organic mental disorders with or without accompanying psychotic disorder are termporary and reversible. If psychiatric impairment attributable to such diagnosis continues beyond 6 months, the report of examination is to be returned to the examiner for reconsideration of the diagnosis.	
9301 Dementia associated with central nervous system syphilis.	
9302 Dementia associated with intracranial infections other than syphilis.	
9303 Dementia associated with alcoholism.	
9304 Dementia associated with brain trauma.	
9305 Multi-infarct dementia with cerebral arteriosclerosis.	
9306 Multi-infarct dementia due to causes other than cerebral arteriosclerosis.	
9307 Dementia associated with convulsive disorder (idiopathic epilepsy).	
9308 Dementia associated with disturbances of metabolism.	
9309 Dementia associated with brain tumor.	
9310 Dementia due to unknown cause.	
9311 Dementia due to undiagnosed cause.	
9312 Dementia, primary, degenerative.	
9313 Removed.	
9314 Removed.	
9315 Dementia associated with epidemic encephalitis.	
9316–9321 Removed.	
9322 Dementia associated with endocrine disorder.	
9323 Removed.	
9324 Dementia associated with systemic infection.	
9325 Dementia associated with drug or poison intoxication (other then alcohol).	
9326 Removed.	
Before attempting to rate organic mental disorders, rating specialist should become thoroughly acquainted with the relevant concepts presented by the current Diagnostic and Statistical Manual of the American Psychiatric Association and the following:	
(1) Under the codes 9300 through 9325 the basic syndrome of organic mental disorder may be the only mental disturbance present or it may appear with related "psychotic" manifestations. An organic mental disorder with or without such qualifying phrase will be rated according to the general rating formula for organic mental disorders assigning a rating which reflects the entire psychiatric picture.	
(2) An organic mental disorder, as defined in the American Psychiatric Association manual, is characterized solely by psychiatric manifestations. However, neurological or other manifestations of etiology common to the mental disorder may be present, and if present, are to be rated separately as distinct entities under the neurological or other appropriate system and combined with the rating for the mental disorder.	
General Rating Formula for Organic Mental Disorders:	
Impairment of intellectual functions, orientation, memory and judgment, and liability and shallowness of effect of such extent, severity, depth, and persistence as to produce total social and industrial inadaptability	100
Less than 100 percent, in symptom combinations productive of:	
Severe impairment of social and industrial adapability	70
Extensive impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Mild impairment of social and industrial adaptability	10
No impairment of social and industrial adaptability	0

PSYCHONEUROTIC DISORDERS

	Rating
9400 Generalized anxiety disorder.	
9401 Psychogenic amnesia; psychogenic fugue; multiple personality.	
9402 Conversion disorder; psychogenic pain disorder.	
9403 Phobic disorder.	
9404 Obsessive compulsive disorder.	
9405 Dysthymic disorder; Adjustment disorder with depressed mood; Major depression without melancholia.	
9408 Depersonalization disorder.	
9409 Hypochondriasis.	
9410 Other and unspecified neurosis.	
9411 Post-traumatic stress disorder.	
Read well notes (1) to (4) following general rating formula before applying the general rating formula.	
General Rating Formula for Psychoneurotic Disorders:	
The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment	100
Ability to establish and maintain effective or favorable relationships with people is severely impaired. The psychoneurotic symptoms are of such severity and persistence that there is severe impairment in the ability to obtain or retain employment	70
Ability to establish or maintain effective or favorable relationships with people is extensively impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in extensive industrial impairment	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce definite industrial impairment	30
Less than criteria for the 30 percent, with emotional tension or other evidence of anxiety productive of mild social and industrial impairment	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability	0
NOTE (1): Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.	
NOTE (2): The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits; fatigue or anixety incident to actual situations; minor compulsive acts or phobias; occasional stuttering or stammering; minor habit spasms or tics; minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a mild, a 10 percent rating under the general rating formula may be assigned.	

PSYCHONEUROTIC DISORDERS—Continued

	Rating
NOTE. (3): It is to be emphasized that vague complaints are not to be erected into a concept of conversion disorder. A diagnosis of conversion disorder must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.	
NOTE (4): When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

PSYCHOLOGICAL FACTORS AFFECTING PHYSICAL CONDITION

	Rating
9500 Psychological factors affecting skin condition.	
9501 Psychological factors affecting cardiovascular condition.	
9502 Psychological factors affecting gastrointestinal condition.	
9503 Removed.	
9504 Removed.	
9505 Psychological factors affecting musculoskeletal condition.	
9506 Psychological factors affecting respiratory condition.	
9507 Psychological factors affecting hemic and lymphatic condition.	
9508 Psychological factors affecting genitourinary condition.	
9509 Psychological factors affecting endocrine condition.	
9510 Psychological factors affecting condition of organ of special sense (specify sense organ).	
9511 Psychological factors affecting other type of physical condition.	
NOTE (1): It is to be emphasized that vague complaints are not to be erected into a concept of psychological disorder. A diagnosis of psychological disorder affecting physical condition must be established on specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of a psychological disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned.	
NOTE (2): When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

[FR Doc. 86-9956 Filed 5-1-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-5-FRL-3010-6]

Air Quality Implementation Plans; Delayed Compliance Order for General Motors Corporation, Saginaw Division, Saginaw, MI

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to General Motors Corporation, Saginaw Division. The Order requires the company to bring volatile organic hydrocarbon emissions from its metallic surface coating lines in Saginaw, Michigan, into compliance with the Michigan Department of Natural Resources Air Pollution Control Commission Rule R336.1621 (Michigan Rule 621), part of the federally approved Michigan State Implementation Plan (SIP). The company is unable to comply with these regulations at this time, and the proposed Order would establish an expeditious schedule requiring final compliance by December 31, 1986. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before June 2, 1986, and requests for a public hearing must be received on or before May 19, 1986. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held 21 days after notice of the date, time, and place of the hearing, which will be provided in a separate notice in the **Federal Register.**

ADDRESS: Comments and requests for a public hearing should be submitted to the Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this

notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Attermeyer, Associate Regional Counsel, Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 886–5312.

SUPPLEMENTARY INFORMATION: General Motors Corporation, Saginaw Division, operates a manufacturing plant in Saginaw, Michigan, which contains coating lines to coat metallic surfaces. The proposed Order addresses volatile organic hydrocarbon emissions from the metal coating lines at the Saginaw Division plant which are subject to Michigan Rule 621, part of a federally approved Michigan State Implementation Plan. This Order requires final compliance with Michigan Rule 621 by December 31, 1986, by coating reformulation or installation of control equipment. The source has consented to the terms of the Order and has agreed to meet the increments established in the Order during the period of this informal Rulemaking.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: April 3, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–9905 Filed 5–1–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 86–16]

Maritime Carriers; Conference Service Contract Authority

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise its regulations governing Agreements By Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984. The Proposed Rule would limit the discretion of a conference to implement service contract authority in a manner not expressly stated in its organic agreement prior to the filing of a modification with the Commission.

DATES: Comments due on or before July 1, 1986.

ADDRESS: Send comments (original and fifteen copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, 46 U.S.C. app. 1701–1720, (the Act or the 1984 Act) provides express statutory authority for individual ocean common carriers or conferences of ocean common carriers to enter into service contracts [1] with shippers or shippers' associations. This authority is stated in section 8(c) of the Act, 46 U.S.C. app. 1707(c), which provides, in relevant part:

(c) Service Contracts.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act.

Section 8(c) also requires both individual carriers and conferences to file service contracts with the Commission on a confidential basis and to publish the essential terms of service contracts in tariff format. The purpose of such publication is to ensure that the essential terms of service contracts shall be available to all similarly situated shippers.[2]

Conference agreements on service contracts are subject to the same regulatory regime as other agreements that are within the Act's scope. Any agreement among the members of a conference regarding the regulation of the use of service contracts is made subject to the Act's requirements by section 4 of the Act.[3] Under section 5(a) of the Act, a "true copy" of every agreement described in section 4, including agreements on service contract authority, must be filed with the Commission.[4] In the case of an oral agreement, "a complete memorandum *specifying in detail the substance of the agreement* shall be filed." 46 U.S.C. app. 1704(a) (italics added).

Once filed, agreement provisions relating to service contracts are processed under the same procedures as any other section 4 agreement. Notice of the filing of such an agreement is published in the **Federal Register** in accordance with section 6(a), 46 U.S.C. app. 1705(a), thereby ensuring an opportunity for public scrutiny and comment. An agreement relating to service contracts is subject to possible rejection pursuant to section 6(b), 46 U.S.C app. 1705(b), and must observe the statutory waiting period before becoming effective, 46 U.S.C. app. 1705(c). Service contract authority is subject to review under the general standard, 46 U.S.C app. 1705(g), and for compliance with the prohibited acts section of the 1984 Act, 46 U.S.C. app. 1709. In short, a conference of ocean common carriers must have express service contract authority in an effective agreement in order to take collective action regarding the use of service contracts under the shield of the antitrust immunity conferred by section 7 of the Act. 46 U.S.C. app. 1706.

Conferences have stated their service contract authority under the 1984 Act in a variety of ways. Of particular concern are certain service contract authorities found in a number of currently-effective conference agreements. Some service contract authorities are stated so generally as to allow virtually unlimited discretion with regard to any particular course of conduct that may be taken in regulating service contracts. Other service contract authorities provide, in varying degrees of detail, for a particular method of regulating service contracts but allow for a change from that method, and implementation of that change, upon a vote of the membership and without filing an amendment to the agreement with the Commission.

These service contract authorities do not appear to be in keeping with the regulatory requirements of the 1984 Act. The grant of antitrust immunity for collective action on service contracts is premised on the assumption that the agreement provision authorizing such action has been subjected to the opportunity for public comment and to a meaningful review by the Commission, both under the general standard and the prohibited acts' section of the 1984 Act, *prior to its implementation.* This pre-implementation clearance procedure would appear to be defeated (1) where a

[1] The term "service contract" is defined at 46 U.S.C. app. 1702(21).

[2] The Commission's rules governing the filing of service contracts and availability of essential terms appear at 46 CFR 580.7. On February 18, 1986, the Commission issued a notice of proposed rulemaking which would substantially revise its service contract regulations. *See* Docket No. 86–6, "Service Contracts", Notice of proposed rulemaking, 51 FR 5734 (February 18, 1986).

[3] Section 4(a)(7) of the Act, 46 U.S.C. app. 1703(a)(7), provides:

(a) Ocean Common Carriers.—This Act applies to agreements by or among ocean common carriers to—

* * * * *

(7) regulate or prohibit their use of service contracts.

[4] Section 5(a) of the Act, 46 U.S.C. app. 1704(a), states in part:

(a) Filing Requirements.—A true copy of every agreement entered into with respect to an activity described in section 4 of this Act shall be filed with the Commission * * *

statement of authority is so general that it allows for a wide range of implementing actions, including actions which are diametrically opposed (*e.g.*, individual service contracts permitted versus individual service contracts prohibited), or (2) where the method of regulating service contracts may be changed and implemented by a vote of the members without filing an agreement modification with the Commission. The Proposed Rule addresses these types of conference service contract authority provisions.

II. The Proposed Rule

The Proposed Rule would require a conference agreement that contained service contract authority to state specifically the method by which the use of service contracts will be regulated pursuant to that authority. A general statement of authority, without more, could not be implemented prior to filing an agreement modification with the Commission. The Proposed Rule would also require that any change in the stated conference method of regulating service contracts could not be implemented prior to filing an agreement modification with the Commission. Finally, as a strictly technical matter of format, the Proposed Rule would reserve a specific numbered article of conference agreements for the statement of service contract authority.

The Proposed Rule would require that any conference agreement that contained service contract authority state the specific method by which service contracts are regulated pursuant to that authority. The Proposed Rule would preclude a conference from implementing a general statement of service contract authority prior to the filing and effectiveness of an agreement modification stating the specific course of conduct that will be followed.

An example of a general statement of service contract authority addressed by the Proposed Rule would be a conference agreement which contained only the following language:

> The conference may regulate or prohibit its member lines from unilaterally entering into service contracts and may also regulate or prohibit any member line from taking independent action on any service contract offered by the conference.

Such a statement is little more than a paraphrase and slight expansion of the jurisdictional language of section 4 of the Act. It provides no indication of the specific course of conduct to be followed with respect to service contracts. Such an agreement, on its face, would not disclose at any particular time whether service contracts are totally prohibited, whether individual service contracts are permitted, whether conference or individual service contracts are subject to terms and conditions, or whether independent action may be taken on any service contract. Such a statement is so broad as to defeat any meaningful pre-implementation review by the Commission under the general standard or the prohibited acts or comment by the shipping public. Moreover, a third party reviewing the effective agreement would be unable to determine what course of conduct the conference was following pursuant to its service contract authority.

A recitation of the jurisdictional language of section 4, without more, would not appear to be an adequate statement of agreement authority that is intended to govern actual business practices. In this regard, it should be noted that section 5(a) of the Act requires that "[i]n the case of an oral agreement, a complete memorandum *specifying in detail* the substance of the agreement shall be filed." Presumably written agreements would also be required to specify in detail the substance of the agreement.[5]

This interpretation is consistent with prior Commission precedent. In *Joint Agreement Between Member Lines of the Far East Conference and the Member Lines of the Pacific Westbound Conference*, 8 F.M.C. 553 (1965), *aff'd in part, rev'd in part, Pacific Westbound Conference v. Federal Maritime Commission*, 440 F.2d 1303 (5th Cir. 1971), *cert. denied*, 404 U.S. 881 (1971) (*Joint Agreement*), the Commission had before it an agreement between two conferences which raised the issue as to whether the agreement was a true and complete agreement between the parties. The Commission found that the agreement was nothing more than ". . . evidence of a general intention of the parties to enter into concerted rate-making. It sets out no details, no procedures . . . nor does it inform any interested person as to how the agreement is to work." *Joint Agreement, supra*, 8 F.M.C. at 558. The Commission formulated the following test for determining whether the agreement is set out in adequate detail:

> Although not articulated in past cases, we are of the opinion that the applicable test here is whether or not the agreement as filed with the Commission and as approved sets out in adequate detail the procedures and arrangements under which the concerted activity permitted by the agreement is to take place. Any interested party should be able, by a reading of the agreement, to ascertain how the agreement is to work, without resort to inquiries of the parties or an investigation by the Commission. This is not to say that we are limiting the scope of "routine actions" which need not be the subject of section 15 filings; we are merely giving purpose to the requirements of the section. We can see no reason for the filing of agreements if they do not inform the Commission and the public in more than the barest outline as to how the agreement is to be carried out. No one reading Agreement No. 8200 could reasonably have been informed as to the procedures under which the respondent conference were carrying out the agreement nor as to the nature of the supplementary agreements which respondents claim are within the contemplation of Agreement No. 8200.

Joint Agreement, supra, 8 F.M.C. at 558. Similarly, in *Agreement 9448—N. Atlantic Outbound/European Trade*, 10 F.M.C. 299, 307 (1967), the Commission held that agreements which were so broadly worded that they failed to ". . . set forth clearly, and in sufficient detail to appraise the public just what activities will be undertaken . . ." would be subject to disapproval under section 15 of the Shipping Act, 1916. Although these cases were decided under the 1916 Act, the same principles regarding the degree of detail and specificity required in agreements would appear to apply to agreements filed under the 1984 Act.

At a minimum, such detail with respect to service contract authority which is intended to govern actual operations would appear to include the following: (1) Whether the conference permits or prohibits service contracts; (2) if conference service contracts are permitted, the significant conditions or terms under which they may be offered; (3) whether the conference permits or prohibits individual service contracts; (4) if individual service contracts are permitted, the significant conditions or terms under which they may be offered; (5) whether the conference permits or prohibits independent action on service contracts. These would appear to be, at a minimum, the items necessary in order that the Commission may adequately review the ongoing rights and responsibilities created under the agreement.

This treatment of service contract authority would be consistent with current Commission policy regarding the review under the 1984 Act of other types of agreement authority. For example, a pooling agreement which merely recited the statutory language stating that the parties are authorized to ". . . pool or apportion traffic revenues, earnings, or

[5] The Commission's Agreement Rules require that an agreement be "complete" and that it "specify in detail the substance of the understanding of the parties." 46 CFR 572.406(a).

losses . . ." would be deficient. It would provide no information as to pool accounting methods, pool penalties or other types of provisions. Some further agreement as to detail would in fact be necessary for the pool to function. Similarly, an agreement which simply stated that the parties may ". . . allot ports or restrict or otherwise regulate the number and character of sailings between ports . . ." could be said to be inadequate. There would be no indication in such a statement of agreement authority as to how the operations of the parties would be conducted. This same objection would apply to agreement authority that merely authorized the parties to regulate or prohibit the use of service contracts. The Proposed Rule would therefore require that conferences with general service contract authority file a modification stating the specific method of treating service contracts prior to implementing that general authority.

The Proposed Rule would also preclude a conference from implementing changes made in its method of regulating service contracts by a vote of the members prior to filing a modification with the Commission. A number of conference agreements contain provisions which allow the conference a substantial amount of flexibility and discretion to regulate the use of service contracts.[6] Such provisions allow the conference to change its method of regulating service contracts by a vote of the members and without filing a modification with the Commission reflecting that change. In some instances there may be virtually unlimited discretion with regard to whether, and the manner in which, service contracts may be offered. For example, a conference agreement might expressly provide that the members may offer individual service contracts. The agreement authority, however, might state further that the members by a vote at a meeting may prohibit, limit or set standards for the use of individual service contracts. In such a case, the parties to the agreement could abolish the right, granted by the agreement, to enter into individual service contracts, as expressly provided for in the agreement, simply by voting to prohibit them and without formal modification of the conference agreement. The result might be that an agreement would have a provision which, on its face, expressly granted the right to offer individual service contracts while the actual practice under the agreement would be that no individual service contracts could be offered. Or the parties could set limits, establish standards, impose terms and conditions upon the use of service contracts or prohibit or limit independent action with respect to such contracts. Subsequently, the members could reinstate the right to offer individual service contracts by another vote of the members or remove particular terms and conditions. In such an example, it is not possible at any given time to know from the face of the agreement itself the particular course of conduct which a conference has chosen with respect to service contracts. Such provisions therefore raise the same concerns as are raised by general statements of service contract authority.

In addition, a provision which would allow for change by conference vote could be implemented in a manner which might violate the prohibited acts section of the 1984 Act, 46 U.S.C. app. 1709, for example, by applying restrictions on service contracts to an individual conference member. Moreover, it is not inconceivable that a change in the method of regulating service contracts could run afoul of the general standard. Requiring the filing of a modification would allow the Commission an opportunity to evaluate the proposed authority and perhaps negotiate revisions or seek a court injunction prior to effectiveness.

Pre-implementation review of changes in conference service contract authority is also important from the perspective of the shipping public. For example, shippers should have an opportunity to comment if a conference that offered service contracts should decide to prohibit them.[7] While removal of the right to offer individual service contracts is clearly an option available to conference parties, the 1984 Act could be interpreted to require that it be done only through the filing of an appropriate modification with the Commission. This would also appear to be required by § 572.406(b) of the Commission's Agreement Rules.[8]

The only exception to the requirement of § 572.406(b) is in the case of an agreement that is considered interstitial implementation of authority. Such actions would include those which concern routine operational or administrative matters such as the establishment of tariff rates, rules and regulations. *See* 46 CFR 572.406(c). However, a decision to prohibit offering of individual service contracts would not appear to be a "routine operational or administrative matter" as contemplated by subsection (c).

The exercise of service contract authority is unlike the exercise of general ratemaking authority. Certain changes in tariff rates, fares, and changes generally may be made by conference vote without further agreement modification. However, there was express support for this in the legislative history of the 1916 Act. *See Agreement 7770—Establishment of a Rate Structure*, 10 F.M.C. 61, 66 (1966), *aff'd sub nom., Persian Gulf Outward Freight Conference v. Federal Maritime Commission*, 375 F.2d 335 (D.C. Cir. 1967) (*Agreement 7770).* Moreover, it is significant that even in the case of ratemaking authority, rate actions which "have the effect of restructuring competition in a manner not reasonably to be inferred from the basic agreement" could not be implemented without specific agreement authority. *Agreement 7770, supra*, 10 F.M.C. at 66. Thus, in *Agreement 7770*, the Commission held that a two-level rate system based upon vessel flag could not be effectuated prior to Commission approval. This rationale suggests that specific implementation of such conference authority could only be accomplished through the filing of a modification with the Commission.

In *Agreement 7770*, the Commission established general guidelines to determine whether such further agreements are interstitial to the underlying authority. Further agreements are not interstitial if they: (1) Introduce an entirely new scheme of rate combination and discrimination not embodied in the basic agreement, (2) represent a new course of conduct, (3) provide new means of regulating and controlling competition, (4) are not limited to the pure regulation of intraconference competition, or (5) constitute an activity the nature and

[6] The voting requirements range from conferences which permit approval by majority vote to conferences which permit individual service contracts only upon a unanimous vote of the members.

[7] The importance of such pre-implementation review is illustrated by the Commission's recent experience with the service contract amendment to the Transpacific Westbound Rate Agreement. On June 19, 1985, the Transpacific Westbound Rate Agreement filed a modification which would have prohibited all new service contracts and the renewal of existing service contracts. The proposed elimination of service contracts produced a storm of protest from shippers (some of whom were parties to existing service contracts) and expressions of concern by members of Congress. Subsequently, the modification was withdrawn.

[8] Section 572.406(b), 46 CFR 572.406(b), states: Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

manner of effectuation of which cannot be ascertained by a mere reading of the basic agreement. *Agreement 7770, supra,* 10 F.M.C. at 65. *See also Tariff FMC 6, Rule 22 of the Continental North Atlantic Westbound Freight Conference,* 21 F.M.C. 594, 597 (1978), *vacated and remanded, Interpool Ltd. v. Federal Maritime Commission,* 663 F.2d 142 (D.C. Cir. 1980). Further agreements made pursuant to such conference authority would appear to fall under at least categories 2 and 3 above and, arguably, category 5.

While the 1984 Act does authorize carrier agreements to control service contracts, including the use of individual service contracts, it would not appear to confer an absolute discretion upon a conference or rate agreement to take any action it wishes by a mere vote of the members without filing a modification. Requiring the filing of a modification with the Commission should not unduly restrict the flexibility of conferences in making changes in their service contract practices in light of the relatively short waiting period under the 1984 Act and the availability of expedited review under section 6(e) of the Act. 46 U.S.C. app. 1705(e).

The Proposed Rule would also include a requirement that service contract authority be contained in Article 14 of conference agreements. This requirement is strictly technical in nature and will facilitate the initial review and periodic evaluation of conference service contract authority.

II. Conclusion

For the reasons stated above, the Commission proposes to promulgate a rule that woud require conferences to file an appropriate agreement modification with the Commission prior to implementing general service contract authority and to file a modification prior to implementing a change in the existing method of regulation service contracts accomplished by a vote of the members. The rule also contains a technical format requirement.

The Federal Maritme Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Director, Bureau of Administration. Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Part 572

Administrative practice and procedure; Antitrust; Contracts; Maritime carriers; Report and recordkeeping requirements.

PART 572—[AMENDED]

Therefore, Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The Authority Citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1701–1717, 1709–1710, 1712 and 1714–1717.

2. Paragraph (a) of § 572.502 is amended to add a new paragraph (a)(5) to read:

§ 572.502 Organization of conference and interconference agreements.

(a) * * *

(5) *Article 14—Service Contracts.*

(i) Each conference agreement that contains service contract authority shall specify the method for regulating or prohibiting the use of service contracts by the conference or by individual members.

(ii) Any significant change in the method of regulating service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(iii) For the purpose of this section, a significant change includes one which: permits or prohibits conference service contracts; permits or prohibits individual service contracts; establishes terms or conditions under which conference or individual service contracts may be offered; or permits or prohibits independent action on service contracts.

* * * * *

By the Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86–9899 Filed 5–1–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–156; RM–5135]

FM Broadcast Station in Ouray, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Class C Channel 289 to Ouray, Colorado, as that community's second local service, in response to a petition filed by Janice Mittelmark.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Ouray, Colorado); MM Docket No. 86–156, RM–5135.

Adopted: April 14, 1986.

By the Chief, Policy and Rules Division.

Released: April 25, 1986.

1. The Commission has before it for consideration a petition for rule making filed by Janice Mittelmark, seeking the

reallotment of Class C Channel 297 [1] from Silverton, Colorado, to Ouray, Colorado, as that community's second local FM service.

2. A staff engineering study has determined that Channel 289 can be allotted to Ouray in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Although petitioner indicated she would apply for Channel 297 (see fn. 1, *supra*), in view of our proposed action herein, she should advise in her comments whether she will now apply for Channel 289, if it is allotted.

4. We believe the proposal warrants consideration since it could provide a second local channel at Ouray for the expression of diverse viewpoints and programming. Therefore, we shall seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Ouray, CO	285A	285A, 289

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Janice Mittelmark, P.O. Box 2455, Durango, Colorado 81300.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Joyner, Mass Media Bureau (202) 634–6530. However, members of the public should note that form the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found 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 proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–9853 Filed 5–1–86; 8:45 am]

BILLING CODE 6712–01–M

[1] Petitioner requested the reallotment of Channel 297 from Silverton to Ouray under the provisions of § 73.203(b) of the Commission's Rules. However, that rule was abolished as a result of the Commission's *Suburban Community Policy*, 53 R.R. 2d 682 (1983). Moreover, an application for Channel 297 at Silverton has been filed by Mrs. Betty Reineke (BPH–850711PG) and accepted for tenderability. Therefore, in accordance with established Commission policy, we shall not consider its reallotment to Ouray, unless it could be accorded a clear comparative preference. See, *Martin and Salyersville, Kentucky*, 50 R.R. 2d 502 (1981). However, rather than delay the process for a comparative analysis, we have substituted Class C Channel 289 for consideration herein in an effort to accommodate petitioner's expressed interest in serving Ouray.

47 CFR Part 73

[MM Docket No. 86–154; RM–4968; RM–5068; RM–5360]

FM Broadcast Station in Conway, Hot Springs and Wrightsville, AR, Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein considers three mutually-exclusive proposals. The first seeks the allotment of FM Channel 290A to Conway, Arkansas, as that community's third commercial service, in response to a petition filed by KCON Broadcasting Co., Inc. The second requests the substitution of Channel 290Cl for 292A at Hot Springs, Arkansas, and

modification of the license of Station KACQ(FM) in response to a request filed by Noalmark Broadcasting Corp. This allotment could provide a second wide area coverage service to that community. The third seeks the allotment of Channel 290A to Wrightsville, Arkansas, as that community's first local broadcast service, in response to a petition filed by Wrightsville Communications Company.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Conway, Hot Springs and Wrightsville, Arkansas), MM Docket No. 86–154, RM–4968, RM–5068, and RM–5360.

Adopted: April 11, 1986.

Released: April 25, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration three mutally exclusive petitions for rule making. KCON Broadcasting Company, Inc. ("KCON") [1] seeks the allotment of Channel 290A to Conway, Arkansas (RM–4968), as that community's third commercial FM service. The second proposal, filed by Noalmark Broadcasting Corporation ("Noalmark"), licensee of Station KACQ(FM) (Channel 292A), Hot Springs, Arkansas, requests the substitution of Channel 290Cl for Channel 292A and modification of its license accordingly, in order to provide that community with its second wide area coverage FM service (RM–5069). The third proposal, filed by Wrightsville Communications Company ("WCC") seeks the allotment of Channel 290A to Wrightsville, Arkansas, as that community's first local broadcast service (RM–5360).

2. Conway (population 20,375),[2] in Faulkner County (population 46,192), is located approximately 41 kilometers (25 miles) northwest of Little Rock, Arkansas. The community currently receives local service from Stations KTOD-FM (Channel 224A) and KMJX(FM) (Channel 286), as well as one fulltime and one daytime-only AM stations. Hot Springs (population 35,781), in Garland County (population 70,531), is located approximately 76 kilometers (47 miles) southwest of Little Rock. (it receives local service from commercial FM Stations KSPA (Channel 244A), KWBO (Channel 248Cl) and KACQ (Channel 292A), as well as one fulltime and two daytime only AM stations. Wrightsville (population 350),[3] in Pulaski County (population 340,613), is located approximately 17 kilometers (11 miles) southeast of Little Rock. It presently has no local broadcast service.

3. Section 73.207(b) of the Commission's Rules requires that co-channel Class A stations be separated by a distance of 105 kilometers (65 miles). However, the distance between Conway and Wrightsville is 58 kilometers (36 miles). Likewise, co-channel Class A and C1 stations must be 196 kilometers (122 miles) apart whereas here, the distance between Conway and Hot Springs is 85 kilometers (53 miles) and 78 kilometers (48 miles) between Wrightsville and Hot Springs. In an effort to resolve these conflicts, a staff engineering study was performed. Another channel (245A) was found to be available for allotment to either Conway or Wrightsville. Therefore, all three proposals must be considered comparatively.

4. In view of our initial findings, we shall optionally propose to allot Channel 245A or 290A to Conway or Wrightsville, or substitute Channel 290C1 for Channel 292A at Hot Springs. Channel 245A can be allotted to Conway with a site restriction 9.2 kilometers (5.7 miles) southwest to avoid short-spacing to Station KAWW–FM (Channel 244A), Heber Springs, Arkansas. Channel 245A can be allotted to Wrightsville with a site restriction 10.7 kilometers (6.6 miles) northwest to negate a spacing deficiency to Channel 243A, England, Arkansas, for which an application is pending (851213ME), and to Station KWEH(FM) (Channel 246C1), Camden, Arkansas. Optionally, Channel 290A can be allotted to Conway with a site restriction 3.0 kilometers (1.9 miles) northwest to avoid a conflict with the 16 kilometer protected buffer zone of Station WGKX(FM) (Channel 290), Memphis, Tennessee. Channel 290A can be allotted to Wrightsville with a site restriction 12.4 kilometers (7.7 miles) west to also avoid short-spacing to Station WGKX(FM), Memphis. However, at a transmitter site located that distance from Wrightsville, we must require WCC, if it wishes to use that channel, to provide showings reflecting that city-grade service could be provided. The Hot Springs modification proposal to substitute Channel 290C1 for Channel 292A can be accommodated at petitioner's present transmitter site.

5. Although KCON and WCC each indicated their interest in applying for Channel 290A, in view of our optional proposals herein, they should advise in their comments whether they will now apply for Channel 245A.

6. As we are unaware at this time of any other Class A or C1 channels for the proposed communities,[4] we shall provide each proponent the opportunity to demonstrate in their comments why their proposal should prevail. In this regard, the parties should be guided by the priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). We shall also propose to modify the license of Station KACQ(FM), at Hot Springs on its requested channel, as requested by Noalmark, in the event Channel 290C1 is substituted for Channel 292A. Pursuant to Commission precedent, should another interest in the Hot Springs allotment be shown, the modification of Station KACQ(FM) could not be made unless at least one additional equivalent channel is available in the community to accommodate any other expressions of interest. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).[5]

[1] KCON is the licensee of Station KCON(AM), Conway.

[2] Population figures were taken from the 1980 U.S. Census unless otherwise indicated.

[3] Population figure taken from the Rand McNally Atlas, 1985 Ed. Although the 1980 U.S. Census lists "Tafton-Wrightsville" (population 1,434), as a census designated place, it cannot be determined therefrom the actual population attributed to Wrightsville.

[4] WCC should note however that Channel 299A may become available at Wrightsville in the event Stations KKTZ(FM) (Channel 298), Mountain Home, Arkansas and KVMA–FM (Channel 300), Magnolia, Arkansas, do not elect to upgrade their facilities to maintain their Class C status. Therefore, WCC may wish to seek a determination from those stations as to their intentions. If, in fact, they are not intending to move within their 16 kilometer protected buffer, such information from them should be submitted in the rule making context to allow our consideration of the availability of Channel 299A at Wrightsville.

[5] See, *Notice of Proposed Rule Making*,, MM Docket 85–313, 40 FR 45439, October 31, 1985, wherein the Commission has under consideration a proposal to modify licenses on the co-channel or adjacent channels, such as Hot Springs, without the

Continued

7. In view of the above, the Commission considers it appropriate to solicit comments on the optional amendments to the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Conway, AR	224A, and 286.	224A, 245A, and 286.
Hot Springs, AR	244A, 248, and 292A.	244A, 248, and 290C1.
Option II		
Wrightsville, AR		245A.
Hot Springs, AR	244A, 248, and 292A.	244A, 248, and 290C1.
Option III		
Conway, AR	224A, and 286.	224A, 245A, and 286.
Wrightsville, AR		290A.
Option IV		
Conway, AR	224A, and 286.	224A, 286, and 290A.
Wrightsville, AR		245A.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. **Note:** A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Dan Winn and Associates, P.O. Box 214, Little Rock, Arizona 72203, (consultant to KCON Broadcasting Co., Inc.).

Richard J. Hayes, Jr., Esq., Law Offices of Richard J. Hayes, Jr., 1359 Black Meadow Rd., Spotsylvania, Virginia 22553, (counsel for Wrightsville Communications Company).

Robert W. Coll, Esq., McKenna, Wilkinson & Kittner, 1150 17th Street, N.W., Washington, D.C. 20036, (counsel for Noalmark Broadcasting Corporation).

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9852 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

---

need to demonstrate the availability of an additional equivalent channel to satisfy other interests.

---

47 CFR Part 73

[MM Docket No. 86-157; RM-5079]

FM Broadcast Station in Spring Valley, MN, Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 286A to Spring Valley, Minnesota, in response to a petition filed by John M. Rolli. This allotment could provide for a first FM broadcast service for the community.

DATES: Comments must be filed on or before June 16, 1986, and reply comments on or before July 1, 1986.

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.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Spring Valley, Minnesota), MM Docket No. 86–157 RM–5079.

Adopted: April 17, 1986.

Released: April 25, 1986.

By the Chief, Policy and Rules Division:

1. A petition for rule making has been filed by John M. Rolli ("petitioner"), seeking the allotment of FM Channel 286A to Spring Valley, Minnesota, as that community's first broadcast service. Petitioner submitted information in support of the proposal and stated his intention to file an application for the channel.

2. Channel 286A can be allocated to Spring Valley, Minnesota, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.20 [Amended]

3. In view of the fact that the proposed allocation could provide a first FM broadcast service to Spring Valley, Minnesota, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Spring Valley, MN		286A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before June 16, 1986, and reply comments on or before July 1, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James E. Price, Vice President, Sterling Communications, Inc., Suite 418 Uptain Building, Chattanooga, Tennessee 37411–4065 (consultant to the petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, oher than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(i), 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 proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to the effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four

copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at it headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-9851 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-67; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Interior Piping

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This notice withdraws a proposal published in the **Federal Register**, Vol. 45, No. 66, at 22118 on April 3, 1980, to generate information to be used in evaluating the need for Federal regulation of gas piping inside buildings. Current pipeline safety regulations apply to gas distribution lines up to the meter at which point it is transferred to the consumer even where the gas meter is located inside a building. Review of comments to Notice 1 of this docket and comments received at both the December 13, 1983, and the December 10, 1985, Technical Pipeline Safety Standards Committee (TPSSC) meetings has convinced the RSPA that existing regulations defining a gas operator's responsibility for gas piping inside a building are appropriate.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, (202) 426-2082, regarding the contents of this notice or the Dockets Branch, (202) 426-3148, regarding copies of this notice or other information in the docket.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB) in Safety Recommendation P-76-10 in pipeline accident report NTSB-PAR-76-2 issued on February 19, 1976, recommended that the Department "amend 49 CFR Part 192 to define more realistically an operator's responsibility for gas piping inside buildings." The report (a copy of which is in the docket and may be obtained from the NTSB), described an interior piping accident which involved a pressure tank rupture in an office building in New York City. Although it was not a contributing factor in the accident, NTSB made its recommendation, in part, because the New York State gas pipeline safety regulations stopped at the building wall, while the Federal rules in Part 192 extended to the outlet of the interior meter. To the best of RSPA's knowledge, there have been no similar types of accidents anywhere under RSPA's jurisdiction in the more than 12 years since this accident, and the disparity between State and Federal regulatory coverage of interior piping is limited to New York. The State of New York, meanwhile, has instituted more stringent rules, helping to prevent this type of accident.

A Gas Research Institute Report, "Safety Research Plan for Gas Utilization," done by the Arthur D. Little Corporation in June 1983 (GRI No. 5081-352-0489) delves into gas incidents inside buildings at some length. This report shows that there is a probability of 1,854 fires or explosions occurring on interior piping annually out of the 40,000,000 gas service lines. This figure included fires or explosions occurring at gas appliances and piping beyond RSPA's regulations. The report also showed that the probability of a fatal accident occurring on interior piping serving nearly 50,000,000 customers would be one in 18 years.

To get some idea as to whether or not a safety problem existed with the portion of interior gas piping considered to be within the scope of 49 CFR Part 192 and also gain information to aid in responding to the NTSB safety recommendation regarding interior piping, the Office of Pipeline Safety Regulation issued an ANPRM. The ANPRM was published in the **Federal Register** as Docket No. PS-67; Notice 1 on April 3, 1980, in Vol. 45, No. 66 at 22118.

According to over 90 percent of the gas distribution operators commenting on the ANPRM, who serve at least 70 percent of the 50,000,000 present day gas customers in the nation, the National Fuel Gas Code, or a local version of it, is in effect for interior piping in the area in which they distribute gas. Usually this Code is given the force of law by local building codes. The National Fuel Gas Code covers the installation of gas piping systems inside buildings. This Code is developed by joint committees of the American National Standards Committee Z223 and the National Fire Protection Association and is classified as ANSI Z223.1 and NFPA 54. The Code states in its scope that:

> *Coverage of piping systems extends from the point of delivery* to the connections with each gas utilization device. For other than undiluted liquefied petroleum gas systems, the *point of delivery is the outlet of the service meter assembly*, or the outlet of the service regulator or service shutoff valve when no meter is provided. For undiluted liquefied petroleum gas systems, the point of delivery is the outlet of the first stage pressure regulator. (emphasis added)

There were 14 questions asked in the ANPRM. These questions dealt with the existing extent and coverage of interior piping by the Part 192 regulations. The questions also dealt with the National Fuel Gas Code and similar local codes and whether or not Federal standards should incorporate the National Fuel Gas Code in Part 192.l Questions on the relative safety of interior piping also were asked. There were 77 commenters who responded. These included several State regulatory agencies, gas distribution system operators, trade associations, including the National Association of Home Builders, and standards committees, including the Building Officials and Code Administrators International, and the ANSI Z223 Committee.

On the question as to whether State and local codes were covering interior piping in satisfactory manner, 81 percent of the commenters thought that they were and only 4 percent thought something additional was needed. Under the existing pipeline regulatory scheme, State codes for interior piping upstream of the meter are at least as stringent as the Federal standards.

Forty-four percent of the commenters through that Federal standards for interior piping (piping upstream of the meter outlet) should continue to apply but only if readily accessible. Twenty-one percent thought that Federal standards should end at the basement wall or the meter outlet whichever is further upstream. The commenters in favor of continuing Federal regulations up to the meters, if the piping was accessible, did so for continuity since NEPA 54 starts at the gas meter. Those commenters in favor of ending jurisdiction at the entrance to the building served cited the difficulties of policing piping on private property and cost of inspections to assure the safety of piping which they believed that once it was completed, was subject to the control of the property owner.

On the question of incorporating the National Fuel Gas Code into Part 192, over 42 percent of the commenters were against it. Three percent favored this idea.

The TPSSC meeting on December 13, 1983, at which the ANPRM was discussed produced about the same

results as the response from the commenters. Some members thought that REPA should not change the existing regulations without more substantive data with regard to interior accidents. The Committee's report issued January 9, 1984, stated in part: "It was a consensus of the Committee that in the absence of any safety data to the contrary, RSPA should withdraw its proposed rulemaking regarding interior piping." At their December 10, 1985, meeting, the TPSSC voted that stopping the pipeline safety regulations at the building wall would not be reasonable. Members were concerned that such a change could cloud the safety of interior piping. The Committee also felt that gas distribution operators are well aware of their responsibilities for gas piping up to and including the gas meter under the present regulations.

Conclusions

In deciding whether to continue this proceeding beyond the ANPRM stage, RSPA has considered the NTSB recommendation, the comments to the ANPRM, the incidence of interior piping accidents, and the TPSSC views. From the NTSB recommendation, one might conclude that operators either are not aware of their obligations under Federal regulations in regard to interior piping or those obligations are somehow inappropriate. Yet, there was no indication from the commenters or the TPSSC that the former might be true. Also, although some industry commenters would like to be absolved of all responsibility for interior piping, no one has seriously made the case that the applicable Federal rules are too onerous or otherwise in appropriate. Certainly there are some "difficulties" in compliance as in gaining access to run leak or corrosion checks, but transportation of gas to an interior delivery point demands close attention to safety. Further, the impact of the "difficulties" has to be considered in view of the small proportion of interior piping (upstream of meters) that is subject to the RSPA rules.

Were RSPA to relax some of the so called "difficult" rules or to pull away entirely from interior piping jurisdiction, other existing standards would not fill the gap. The National Fuel Gas Code, which applies to other interior piping, starts at the outlet of interior meters (not the building wall) and does not apply to operation and maintenance problems associated with the termination of gas service lines inside buildings. It was this potential clouding fof safety control that formed the basis for the TPSSC vote, and has persuaded RSPA not to relax the present rules.

At the same time, neither the RSPA data nor the GRI study show any need for expanded RSPA involvement with interior piping beyond the limits now set by Part 192.

For these reasons, the proposals presented in Docket PS–67; Notice 1 are hereby withdrawn.

Issued in Washington, DC, on April 28, 1986.

Robert L. Paullin,

Director, Office of Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 86–9844 Filed 5–1–86; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte 290 (Sub-2)]

Practice and Procedure; Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking and reopened proceeding.

SUMMARY: The Commission proposes to modify its rules governing railroad cost recovery procedures by requiring railroads to adjust their rates to take into account declines in the rail cost adjustment factor. The recent sharp decline in rail costs has convinced us that we must reexamine our rules to determine whether these adjustments should be adopted. By this notice, the Commission also seeks comments on how the agency can mitigate errors in forecasting costs in a previous quarter, and how compliance with any rate reductions ordered should be monitored.

DATE: Comments are due May 16, 1986. Replies are due May 23, 1986.

FOR FURTHER INFORMATION CONTACT:
William T. Bono, Bureau of Accounts, (202) 275–7354

or

Craig M. Keats, Office of General Counsel, (202) 275–7602.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (Washington, DC, metropolitan area), or toll-free (800) 424–5403.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. Although we believe that it will not have a significant adverse impact on a substantial number of small entities, we also request comments on this issue.

List of Subjects in 49 CFR Part 1135

Administrative practice and procedures, Railroads, and Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 10321, 10704, 10707a, and 5 U.S.C. 553.

Decided: April 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Andre concurred in the result with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–9921 Filed 5–1–86; 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; Findings on Petitions and Initiation of Status Reviews

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and status review.

SUMMARY: The Service announces 90-day findings in respect to five petitions and a 12-month finding in respect to one petition to amend the Lists of Endangered and Threatened Wildlife and Plants. Status review is initiated for one plant and one moth species that are subjects of petitions.

DATES: The findings announced in this notice were made between July 19, 1985, and January 28, 1986. Comments and information 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, DC 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, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly 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.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register.**

On July 5, 1985 (50 FR 27637), an initial 90-day finding was announced for a petition to list the Samoan fruit bat. Status review for the bat began also with that notice. Status review for the moth species *Eucosma hennei* mentioned below was initiated when the species was included under category 2 of the comprehensive invertebrate notice of review published May 22, 1984 (49 FR 21664).

Findings

A petition from Professor Paul Alan Cox of Brigham Young University, was dated November 19, 1984, and received by the Service on November 27, 1984. It requested determination of endangered status for the Samoan fruit bat (*Pteropus samoensis samoensis*), which is found in American Samoa and Western Samoa. Observations by the petitioner, who spent several years studying this bat in the field, suggested that it had become extremely rare through destruction of its habitat and killing by people for use as food. On July 5, 1985 (50 FR 27637), the Service announced its 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted.

Service personnel carrier out limited field investigations in American Samoa in June, July, and November of 1985, which indicated that the Samoan fruit bat might not be as rare as suggested by the petition. These observations, together with other information recently compiled by the Service, indicate a need for additional studies to assess the status of this bat and to evaluate the factors that may jeopardize its survival. The Service plans to undertake such studies in July 1986 in connection with bird survey work in Samoa.

The petitioned determination of endangered status for the Samoan fruit bat is considered to be warranted, but precluded by other listing activity. Additional data will be gathered, and expeditious progress is being made to list other species that are thought to be of higher priority.

The following 90-day findings are reported in respect to petitions as noted:

1. The Minnesota Department of Natural Resources (Mr. Roger Holmes, Chief, Nongame Program) submitted a petition to list as endangered the American swallow-tailed kite (*Elanoides forficatus*). The complete petition was received on April 17, 1985, and was dated April 5, 1985. The petition documented the extirpation of this large raptor from the central portions of the United States in the late 1800's and early 1900's. Some nesting occurs from Louisiana to South Carolina with most of the population nesting from southern Georgia southward through Florida. No threats to the extant population were documented. The species has apparently remained stable for some 50 years. The Service, therefore, found that no substantial information had been presented that the requested action may be warranted.

2. A petition from Mr. J. B. Hilmon, Associate Deputy Chief, Forest Service, U.S. Department of Agriculture was dated May 3, 1985, and was received by the Service on May 7, 1985. It requested removal of *Agave arizonica* from the List of Endangered and Threatened Plants. The Forest Service submitted two administrative reports in support of its request. The Service considered these in addition to a symposium proceedings paper by Pinkava and Baker entitled "Chromosome and Hybridization Studies in Agave," that reports low percent stainability of *Agave arizonica* pollen, indicating low fertility and a possibility that the plants are hybrids. The Service found that the petition and other available data presented evidence that the petitioned action may be warranted. However, before a final decision is made to consider *Agave arizonica* a hybrid and therefore delist it, the Service will seek additional information and a peer review of all available data by Arizona plant taxonomists and agave experts.

3. A petition from Mr. Bruce S. Manheim, Jr., Environmental Defense Fund, was dated May 21, 1985, and was received by the Service on May 28, 1985. It requested listing of two moth species, *Eucosma hennei* (family Olethreutidae) and *Lorita Abornana* (family Cochylidae), as endangered. The petition claimed that both moth species are presently know only fro El Segundo San Dunes in Los Angeles County, California. The portions of the dunes where the moths are known to occur have been included in planning for development by the City of Los Angeles, Department of Airports. The Service found that the petition presented substantial information indicating that the requested action may be warranted. Status review for *Eucosma hennei* has already been announced, as noted above. Formal status review for *Lorita abornana* begins herewith.

4. A petition from Dr. Tony Povilitis, Director, Campaign for Yellowstone's Bears, was dated July 31, 1985, and was received by the Service on August 6, 1985. It requested that the Yellowstone population of the grizzly bear (*Ursus arctos horribilis)* be reclassified from threatened to endangered under the Endangered Species Act (ESA) of 1973, as amended. The petitioner submitted information on the current status and threats to the Yellowstone grizzly. This information, along with all other data and expert opinions available to the Service, was considered in reviewing this petition.

An Interagency Grizzly Bear Committee (IGBC) was formed in 1983. It adresses the protection and management needs of the grizzly bear. The Service also appointed a grizzly bear Recovery Coordinator (GBRC), Dr. Christopher Servheen, in 1981. Through the IGBC and the efforts of Dr. Servheen, the Service is continuously aware of the current management and status of the grizzly bear.

After a thorough review of the information presented in the petition and all other information available to the Service, the petition was found to not present substantial information

indicating the Yellowstone grizzly should be reclassified from threatened to endangered. A threatened species as defined by section 3 of the Act is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." An endangered species is defined as "any species which is in danger of extinction . . ." The Service believes that the Yellowstone population of the grizzly bear is not in danger of extinction and is properly classified as threatened. Since 1983, increased management efforts have been mounted to address the threats facing the grizzly bear, including habitat destruction and human-induced mortality. Additional management efforts are planned for the future. The threats to the grizzly bear in the yellowstone ecosystem are recognized in a recovery plan and are being actively addressed by the IGBC.

5. A petition from Mr. Paul R. Neal of the Division of Biological Sciences, State University of New York, Stony Brook, New York, was dated October 8, 1985, and was received by the Service's Albuquerque Regional Office on October 15, 1985. It requested that a plant, *Talinum humile*, be added to the List of Endangered and Threatened Plants. This plant has historically been known from three locations, one each in Arizona, New Mexico, and Federal District (Sierra de Ajusco), Mexico. The type locality in New Mexico was recently searched, but no *Talinum humile* individuals were relocated there. The Service will place this species in category 2 of its comprehensive plant notice of review. Additional field searches and threat information are needed prior to proceeding with a proposed rule. The Service has found that the petitioned action may be warranted. Formal review of the status of *Talinum humile* is initiated with publication of this notice.

Section 4(b)(3)(b)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the **Federal Register**. The most recent progress report was published on January 9, 1986 (51 FR 996).

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the moth species *Lorita abornana* (family Cochylidae) and the plant *Talinum humile* (family Portulacaceae). These species will be included in the next update of comprehensive invertebrate and plant notices of review, respectively.

Author

This notice was prepared by Dr. George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority

The Authority for this action is the 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: April 18, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–9838 Filed 5–1–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60231–6031]

Regulations Governing the Taking and Importing of Marine Mammals

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

ACTION: Advance Notice of Proposed rulemaking.

SUMMARY: The General Permit issued in 1981 to the Federation of Japan Salmon Fisheries Cooperative Association to incidentally take marine mammals during the mothership salmon gillnet fishery is scheduled to expire on June 9, 1987. This Notice announces the NMFS' tentative schedule for amending the regulations governing this general permit, whether to reissue a new general permit and on holding formal hearings before an Administrative Law Judge to consider these matters.

DATE: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Species and Habitat Conservation, NMFS, Washington, DC 20235, 202–634–7529.

SUPPLEMENTARY INFORMATION: The General Permit issued in 1981 to the Federation of Japan Salmon Fisheries Cooperative Association to incidentally take 5,500 Dall's porpoise, 25 northern sea lions and 450 northern fur seals annually during the mothership salmon gillnet operations is scheduled to expire on June 9, 1987. The NMFS is initiating a rulemaking process to consider the reissuance of the general permit to the Federation in 1987 and beyond and in anticipation of receiving a new application under the Marine Mammal Protection Act from the Federation. The tentative schedule to consider this issue is as follows:

March 6, 1987—Public scoping meeting under NEPA.

August 8, 1986—Release of DEIS and Notice of Proposed Rulemaking

October 20, 1986—Start of Formal Administrative Law Judge (ALJ) Hearings

November 18, 1986—Close of Briefing Schedule

December 12, 1986—Receipt and release of ALJ recommendations.

January 2, 1987—Exceptions to ALJ Decision.

May 1, 1987—Final Decision by Administrator, NOAA. Release of Final EIS.

June 9, 1987—Effective date of action.

The ex parte communications prohibitions at 5 U.S.C. 557(d) shall begin on August 8, 1986, or at such time that the Formal Hearings are actually noticed by the Agency.

Dated: April 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–9933 Filed 5–1–86; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 51, No. 85
Friday, May 2, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Child Nutrition; Meeting

AGENCY: Food and Nutrition Service.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the U.S. Department of Agriculture, has scheduled a meeting for June 3–5, 1986.

DATE: The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, June 3 and 4 and Thursday, June 5 from 9:00 a.m. to noon.

ADDRESS: The meeting will be held at the Days Inn of Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Gatley, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: The meeting will be devoted primarily to a discussion of current program issues and the development of the 1986 biennial report to the President and the Congress. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: April 23, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86–9935 Filed 5–1–86; 8:45 am]

BILLING CODE 3410–30–M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment; Denmark; Condensed Milk

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Country of Origin Adjustment for Certain Condensed Milk from Denmark.

SUMMARY: Presidential Proclamation 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country of origin listed opposite the quota. This notice implements such an adjustment with respect to the quota quantity assigned to Denmark for condensed milk in airtight containers.

DATE: Effective May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of that Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the amount of condensed milk specified in TSUS Item 949.90 for Denmark will be entered from that country during calendar year 1986.

Notice is hereby given that the 1986 unused quota quantity for condensed milk specified in TSUS Item 949.90 for Denmark may be imported from Canada, Denmark, the Netherlands and Australia for the remainder of the 1986 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1987.

Issued at Washington, DC this 24th day of April 1986.

Thomas O. Kay,

Administrator, FAS.

[FR Doc. 86–9960 Filed 5–1–86; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Sante Fe National Forest; Mora, San Miguel, Santa Fe, Sandoval, Los Alamos, and Rio Arriba Counties, New Mexico; Extension of Public Comment Period

The Department of Agriculture, Forest Service, has extended the public comment period on the Draft Environmental Impact Statement for the proposed Sante Fe National Forest Plan

(January 24, 1986, 51 FR 3250). The public comment period is extended through May 30, 1986.

Dated: April 24, 1986.

David F. Jolly,

Deputy Regional Forester.

[FR Doc. 86-9848 Filed 5-1-86; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Tennessee Advisory Committee to the United States Commission on Civil Rights; Cancellation

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 Tennessee Advisory Committee to the Commission originally scheduled for May 5, 1986, convening at 6:30 p.m. and adjourning at 9:30 p.m., at the Vanderbilt Plaza Hotel, 2100 West End Avenue, Nashville, Tennessee (FR Doc 86-8089, Page 12533) has been cancelled.

Dated at Washington, DC, April 29, 1986.

Ann Goode,

Program Specialist.

[FR Doc. 86-9947 Filed 5-1-86; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee to the United States Commission on Civil Rights; Cancellation

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 Tennessee Advisory Committee to the Commission originally scheduled for May 6, 1986, convening at 8:00 a.m. and adjourning at 5:00 p.m., at the Vanderbilt Plaza Hotel, 2100 West End Avenue, Nashville, Tennessee (FR Doc 86-8088, Page 12534) has been cancelled.

Dated at Washington, DC, April 29, 1986.

Ann Goode,

Program Specialist.

[FR Doc. 86-9948 Filed 5-1-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Communications Committee of the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on May 9, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and Place: Friday, May 9, 1986, 3:00 p.m., at the National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director Office of Business Liaison, U.S. Department of Commerce (202/377-3942), Main Commerce Building, Washington, DC 20230.

Dated: April 29, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

FR Doc. 86-9890 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-BW-M

Foreign-Trade Zones Board

[Order No. 329]

Resolution and Order Approving the Application of the Hawaii State Department of Planning and Economic Development for a Subzone at the Maui Pineapple Facility in Kahului, HI; Proceedings of the Foreign-Trade Zones Board, Washington, DC

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 Hawaii State Department of Planning and Economic Development, submitted on behalf of the State of Hawaii, grantee of Foreign-Trade Zone 9, filed with the Foreign-Trade Zones Board (the Board) on October 18, 1985, requesting subzone status for the pineapple cannery of Maui Pineapple Company, Ltd., in Kahului, Maui, Hawaii, within the Kahului Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

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 in Kahului, Hawaii

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 USC 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 Hawaii State Department of Planning and Economic Development, on behalf of the State of Hawaii, grantee of Foreign-Trade Zone No. 9, has made application (filed October 18, 1985, Docket 37-85, 50 CFR 45137) in due and proper form to the Board for authority to establish a special-purpose subzone at the pineapple cannery and can-making facility of Maui Pineapple Company, Ltd., in Kahului, Hawaii, within the Kahului 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 are satisfied;

Now, therefore, in accordance with the application filed October 18, 1985, the Board hereby authorizes the establishment of a subzone at the facilities of Maui Pineapple Company in Kahului, Hawaii, designated on the records of the Board as Foreign-Trade Subzone No. 9D 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 issued thereunder, to the same extent as though the same

were fully set forth herein, 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 or his delegate at Washington, D.C., this 25th day of April 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

[FR Doc. 86-9926 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 14-86]

Foreign-Trade Zone 45, Portland, OR; Application for Subzone Floating Point Systems Computer Plant, Beaverton

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of Foreign-Trade Zone 45, requesting special-purpose subzone status for the computer service operation of Floating Point Systems, Inc., (FPS) in Beaverton, Oregon, within the Portland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 15, 1986.

The FPS plant is located on an 18-acre site at 3601 S.W. Murray Blvd., Beaverton. The facility produces, services, upgrades and repairs special-purpose scientific computers and array processors, employing 1400 persons. Zone procedures would be used for the repair and servicing of FPS products, including many which have been sold abroad and returned to the U.S. for servicing. Certain electronic components for the service and repair operations are sourced abroad.

Zone procedures would exempt FPS from duty payment on computers and foreign components that are reexported. The company would be able to defer duty on foreign components used in the repair and service of computers for the domestic market. The savings will help keep the company's U.S. service operation internationally competitive.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Clyde Kellay, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Federal Bldg., Room 198, Portland, OR 97209; and Colonel Gary R. Lord, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208.

Comments concerning the proposed subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 30, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce, District Office, 1220 S.W. 3rd Ave., Room 618, Portland, OR 97204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: April 28, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-9923 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Short Supply Review on Certain Steel Wire: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to PVC-coated galvanized low carbon steel wire.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received a short supply request for PVC-coated galvanized low carbon steel wire in coils for the production of gabions, mattresses and related products. The steel wire ranges from 2.2mm to 3.4mm in diameter, has a zinc coating not less than 260 to 290 g/m^2, and a PVC coating thickness of 0.5mm to 0.6mm with a minimum acceptable thickness of 0.45mm.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: April 24, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-9925 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-DS-M

The University of Toledo; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 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, DC.

Docket No. 83-215R. Applicant: The University of Toledo, Toledo, OH 43606. Instrument: Heavy Ion Accelerator. Original notice of this resubmitted application was published in the **Federal Register** of June 30, 1983.

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: The National Bureau of Standards (NBS) advises in its memorandum dated March 26, 1984, that domestic instruments are available which meet the pertinent specifications given in the application and are therefore scientifically equivalent to the foreign instrument for the applicant's intended use. (See § 301.5(d)(1)(i) of the regulations.)

We had denied the application without prejudice to resubmission in accord with § 301.5(e). NBS had previously recommended that the applicant compare the foreign instrument with domestically made instruments from Veeco Instruments Incorporated and from National Electrostatics Corporation (NEC) and show that these were not scientifically equivalent as required by § 301.5(d)(1)(i). The applicant's resubmission failed to demonstrate that use of these domestic instruments would preclude accomplishment of the intended use.

NBS specifically rejected the "deficiencies" alleged by the applicant in the Veeco Model 300R:

1. The Veeco Model 300R is "extremely easy to modify as all optics and beam lines are at ground potential (rather than at high voltage as in the Danfysik machine)"; and it "is intended to be a research accelerator, not merely an automatic ion implanter."

2. Veeco instruments can "isotopically separate masses 1 to 280 (either atoms or molecules) with a FWIM [Full Width at one Tenth Maximum] of 1 atomic mass unit or better."

3. The Veeco 300R "can accelerate all atomic species including iron group and refractory metals and, because of its flexibility, a 911A source could be adapted."

4. Veeco beam currents (up to 270 amperes) are "equal to or greater than those produced by the foreign article."

The applicant also claimed that NEC instruments were not of domestic manufacture since the ion source portion of the accelerator was made by Danfysik in Denmark. NEC, however, was using the Danfysik equipment as an injector or component for its accelerator systems. Section 301.2(g) states that "a domestic instrument need not be made exclusively for domestic components or accessories."

The applicant raised no technical arguments against the NEC instruments and, in fact, characterized the company as "a manufacturer of high quality large accelerators," implying that this domestic manufacturer was capable of supplying instruments fully accpetable for the intended purposes. The applicant claimed that NEC was ". . . not a routine supplier of small machines" and also stated that "This along with the nature of the first bid by NEC as discussed above, led to their being excluded in the second round." In a first round of bid proposals, three manufacturers (including Danfysik) submitted quotations which, by the applicant's admission, exceeded budget expectations. The applicant subsequently sent out a scaled-down request for quotation (RFQ) allowing for possible technical trade-offs to meet budgetary constraints. Neither of the two domestic manufacturers was sent a copy of the scaled-down RFQ. Moreover, NBS asserts that, contrary to the applicant's statements, NEC has made "many such small accelerators" (memorandum of March 26, 1984).

It is thus clear, at least in the case of NEC, that the applicant neglected at least one domestic manufacturer on the basis of considerations of "cost," "convenience" or "personal preference" or to "accommodate institutional commitments or limitations" (see § 301.2(s)).

On the basis of the foregoing as well as of the NBS finding "that the domestically manufactured instruments or apparatus available from both NEC and Veeco are scientifically equivalent to the foreign article for the applicant's intended purposes," we deny the application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 86-9924 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Monday, June 9, 1986, from 8:30 a.m. to 5:30 p.m., and Tuesday, June 10, 1986, from 8:30 a.m. to 11:30 a.m. in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland, from 2:00 p.m. to 3:00 p.m. in Room 5854, Department of Commerce, Washington, DC.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301-921-2411.

Dated: April 28, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-9846 Filed 5-1-86; 8:45 am]

BILLING CODE 3510-13-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage

for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–802,902
Wood Bonding with Cellulose Solvents
SN 6–814,944
Modified Plant Fiber Additive for Food Formulations
SN 6–817,374
Novel Phenazine Antibiotic from Pseudomonas Fluorescens
SN 6–818,564
Fluidic Permeability Measurement Bridge
SN 6–825,004
Washer for Plant Roots and Other Articles

Department of Commerce

SN 6–832,935
Transformation Toughening Agents and Transformation Toughened Ceramics and High Pressure Process for Preparing Same

Department of Health and Human Services

SN 6–494,378 (4,573,467)
Optical Coupling Device for Biomicroscope
SN 6–508,323 (4,571,385)
Genetic Reassortment of Rotaviruses for Production of Vaccines and Vaccine Precursors
SN 6–773,069
Derivatization of Amines for Electrochemical Detection
SN 6–784,258
Apparatus and Method for Measuring Muscle Sarcomere Length in Vivo
SN 6–802,680
Antiinflammatory 2,3-Didemethylcolchicine and Additional Derivatives
SN 6–824,467
Preparation of Human T-Cell Lymphotropic Virus Transactivating Protein (p42–LOR)
SN 6–824,848
Metaphit and Related Compounds as Acylating Agents for the [^{3}H] Phencyclidine Receptors
SN 6–843,727
Pertussis Toxin Gene: Cloning and Expression of Protective Antigen
SN 6–847,714
Vinca Alkaloid Photoactive Analogs and Their Uses

Department of the Air Force

SN 6–743,326
Contoured Punch Tool for Removing Semi-Tubular Rivets
SN 6–756,549
Power Sensing Device
SN 6–807,155
Ethynyl-Containing Aromatic Monomers
SN 6–807,426
Ethynyl-Containing Aromatic Polyamide Resins
SN 6–810,140
Paint Removal Process
SN 6–810,432
Fiber Optic Cable Storage Device

Department of the Army

SN 6–526,763 (4,571,632)
Alternate Line Interpolation Method and Apparatus
SN 6–789,258
Quantitative Immunochromatographic Strip Assay Method and Apparatus
SN 6–812,603
Amorphous Silicon Spatial Light Modulator
SN 6–823,975
Piezoelectric Resonators Using Lateral Field Excitation
SN 6–831,027
Method of Monitoring Electrochemical Cells

Department of the Interior

SN 6–536,088 (4,567,763)
Passive Encoder for Range Knobs
SN 6–537,187 (4,568,014)
Bonding of Metallic Glass to Crystalline Metal
SN 6–660,666 (4,568,652)
Soluble Additives to Improve High Temperature Properties of Alumina Refractories

[FR Doc. 86–9889 Filed 5–1–86; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1986 Spring Meeting; discuss current issues relevant to women in the Services; and plan the program for the next semiannual meeting scheduled for 26–30 October 1986 in Williamsburg, Virginia.

All meeting sessions will be open to the public.

DATES: June 5, 1986, 1:30–5:00 p.m. and June 6, 1986, 9:30–11:30 a.m.

ADDRESS: OSD Conference Room 1E801 #1 (June 5); 1E801 #7 (June 6) The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the meeting must notify the point of contact listed above no later than May 22, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 29, 1986.

[FR Doc 86–9939 Filed 5–1–86; 8:45 am]

BILLING CODE 3810–01–M

Commercial Activities Inventory Report and Five Year Review Schedule; (OMB A–76 Implementation)

AGENCY: DoD.

ACTION: Notice.

SUMMARY: This notice announces the publication of the DoD Commercial Activities Inventory Report and Five Year Review Schedule for Fiscal Year 1985. This document may be obtained by writing to the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, referring to stock number 008–000–00453–6, and enclosing a check in the amount of $20.00, payable to the Superintendent of Documents.

SUPPLEMENTARY INFORMATION: This document is published under the provisions of OMB Circular A–76, which requires the Department of Defense to publish an annual inventory report of all commercial activities. The OMB also requires that the Department of Defense publish a five year schedule for reviewing all in-house commercial activities. The purpose of the review is to determine whether the in-house

method of operation should continue or whether an in-house versus contract cost comparison should be performed to determine the most cost effective method of operation.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 29, 1986.

[FR Doc. 86-9938 Filed 5-1-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board. (ASB).

Dates of Meeting: Tuesday & Wednesday, 20-21 May 1986.

Times of Meeting: 0900-1630.

Places: US Army Concepts Analysis Agency, Bethesda, MD.

Agenda: The Army Science Board Ad Hoc Subgroup on Helicopter Lift Capabilities in Europe will meet to review Army models and processes for determinaiton of requirements and capabilities of helicopters. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

FR Doc. 86-10013 Filed 5-1-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday & Wednesday, 20-21 May 1986.

Times of Meeting: 0700-1700 (20 May 86); 0700-1500 (21 May 86).

Place: Pentagon, Washington, DC.

Agenda: The Science Board 1986 Summer Study Panel on C^{3}I Requirements for AirLand Batle will meet to receive briefings on C^{3}I requirements, funding, and advance technology. This meeting will be closed to the public in accordance with Section 552(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046

Sally A. Warner,

Administrative Officer, Army Science Board.

FR Doc. 86-10014 Filed 5-1-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification for Proposed Remedial Action at the Monticello Uranium Mill Tailings Site, Monticello, UT

AGENCY: Department of Energy.

ACTION: Notice of floodplain involvement and opportunity for public comment.

SUMMARY: The Department of Energy proposes to conduct remedial action at the former Atomic Energy Commission uranium millsite in Monticello, Utah. Monticello lies in the southeast corner of Utah in the northern portion of San Juan County. The millsite will be cleaned up in accordance with the Environmental Protection Agency (EPA) standards for Remedial Action at Inactive Uranium Processing Sites (40 CFR Part 192). The currently proposed remedial action alternative entails removing all contaminated material from within the floodplain and stabilizing approximately 2.4 million tons of tailings contaminated material at the site.

In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR Part 1002), DOE will prepare a floodplain assessment to be included in the Environmental Assessment (EA) being prepared for the proposed remedial action. The EA will address disposal of the contaminated material at alternative sites and compare these alternatives to onsite stabilization or performing no remedial action.

Further information is available from the Department of Energy at the address shown below. Public comments or suggestions regarding the proposed activities in the floodplain area are invited.

Requests to receive copies of the Environmental Assessment when published may be sent to the address shown below.

DATE: Any comments are due on or before May 14, 1986.

ADDRESS: Send comments to: W.E. Murphie, U.S. Department of Energy, Division of Facility and Site, Decommissioning Projects, NE-23, Washington, DC 20545.

Dated: April 22, 1986.

William R. Voigt, Jr.,

Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 86-9940 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Monday, June 2, 1986; 9:30 a.m. to 12:00 Noon.

Place: The Westin Hotel, 2401 M Street NW., Washington, DC 20037.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington; DC 20545. Telephone: 301/353-2847.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the committee: To review requests for advice, information, etc., from the Secretary of Energy to the National Coal Council, and to recommend to the Council studies to be undertaken by the Council.

Tentative Agenda

—Call to Order by Gerald Blackmore, Chairman
—Report on Work Group Reports of studies for the Secretary of Energy
—Discussion of any other business properly brought before the Committee
—Public Comment—10 Minute Rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 24, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-9876 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Tuesday, June 3, 1986; 9:30 a.m. to 11:30 a.m.

Place: The Westin Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Office of Fossil Energy (FE-23), Germantown, Maryland, 20545, Telephone: 301/353-2847.

Purpose of the Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Opening Remarks by the Chairman.
—Remarks by Donald L. Bauer, Acting Assistant Secretary for Fossil Energy.
—Coal Policy Committee Report—Presentation, dicussion, and action on reports for the Secretary of Energy.
—Report of Nominating Committee and election of officers.
—Comments from incoming Chairman.
—Discussion of any other business properly brought before the Council.
—Public Comment—10 Minute Rule.
—Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m., and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 29, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR. Doc. 86-9941 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

Dose Assessment Advisory Group; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given to the following meeting:

Name: Dose Assessment Advisory Group (DAAG).

Date and Time: Wednesday, May 28, 1986, 8:30 a.m.-5:00 p.m.; Thursday, May 29, 1986, 8:30 a.m.-5:00 p.m.; Friday, May 30, 1986, 8:30 a.m.-4:00 p.m.

Place: U.S. Department of Energy, Nevada Operations Office Auditorium, 2753 South Highland Drive, Las Vegas, Nevada.

Contact: Charles M. Campbell, Deputy Project Manager, Off-Site Radiation Exposure Review Project, Nevada Operations Office, U.S. Department of Energy, Post Office Box 14100, Las Vegas, Nevada 89114, Telephone: (702) 295-0991.

Purpose of the Group: To provide the Secretary of Energy and the Manager, Nevada Operations Office (NV), with advice and recommendations pertaining to the Off-Site Radiation Exposure Review Project (ORERP). This project concerns the evaluation and assessment of the amount of radiation received by members of the off-site population surrounding the Nevada Test Site (NTS) as a result of the nuclear test operations conducted at NTS.

Tentative Agenda

May 28, 1986

—Historical Overview of ORERP.
  Origin of ORERP.
  Development of Methodology.
—Collection of Historical Information.
  Coordination and Information Center.
  Document Collection.
  Compilation of Historical and Radiological Measurements.
  Population and Demographic Information.
  Survey of Life-Style, Food Habits and Agricultural Practices.
—Reanalysis of Historical Results.
  Dosimetry.
  Fallout Patterns.
  Boltzmann "Hot Spot."
  Gum-Film Network and Archived Soil Samples.
—Techniques for Assessing Historical Fallout Deposition Utilizing Current Measurements.
  Soil Sampling from Undisturbed Lawns.
  Sampling Lake Sediments.
  Analyzing Data from Natural Uranium Resources Evaluation (NURE).
  Soil Sampling from Pristine Locations.
—Public Comment and Discussion.

May 29, 1986

—Calculations and Data Bases to Define Deposition in the Phase I Area.
  Source-Term Calculations.
  Town Data Base.
—Calculations for External Dose.
  Shielding, Weathering, Energy Dependence, and Life-Style Factors.
  Individual and Collective Dose Estimates for Phase I.
—Uptake of Radionuclides via Ingestion.
  Screening Calculations.
  Pathway Code for Radionuclide Uptake.
  Milk Production and Distribution.
—Calculation of Internal Dose.
  Inhalation Pathway.
  Ingestion Pathway.
  Individual and Collective Dose Estimates for Phase I.
—Model Validation and Issues of Uncertainty.
  Town Data Base.
  External Dose.
  Pathway Analysis.
  Internal Dose.
—Public Comment and Discussion.

May 30, 1986

—Dosimetry Reconstruction Beyond 200 Miles.
  Soil Sampling Program.
  Meteorological Modeling of Fallout Deposition.
  Sample Results of Dosimetry Calculations for Phase II.
—Quality Assurance.
  ORERP Quality Assurance Plan.
  Quality Checking of Data Bases.
  Final Disposition of CIC/ORERP Documents.
  EML Evaluation of ORERP Soil Program.
—Administrative Summary.
  Reporting of Project Results.
  DAAG Recommendations.
  Synopsis by Project Manager.
  Synopsis by DAAG Chairman.
—Public Comment and Discussion.
—Press Conference.

Public Participation: The meeting is open to the public. The Chairperson of the 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 Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Campbell, at the address or telephone number listed above.

Transcripts: Available for public review and copy at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 25, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–9877 Filed 5–1–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of March 17 through April 11, 1986; Burlile Oil Co. et al.

During the period of March 17 through April 11, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications 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 decison 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 these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: April 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Burlile Oil Company, Gallipolis, Ohio; KEE–0022, reporting requirements

Burlile Oil Company filed an Application for Exception from the provisons of EIA Form EIA–782B. The exception request, if granted, would relieve Burlile from its monthly reporting obligation. On April 8, 1986, the Department of Energy issued Proposed Decision and Order which determined that the exception request be denied.

County Fuel Co., Inc., Baltimore, MD; KEE–0144, motor gasoline

County Fuel Co., Inc. filed an Application for Retroactive Exception from the provisions of the reseller-retailer price rule at 10 CFR 212.93. The exception request, if granted, would excuse the firm from liability for alleged overcharges of $197,305.49, plus interest. On April 8, 1986 the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86–9874 Filed 5–1–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of March 24 through March 28, 1986; Bill's Oil Co., Inc., et al.

During the week of March 24 through March 28, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Bill's Oil Company, Inc., 3/26/86; KEE–0008

Bill's Oil Company, Inc. filed an Application for Exception from the requirement to submit Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other reporting firms. Accordingly, exception relief was denied.

Huron Oil Company, 3/28/86; KEE–0001

On September 26, 1985, Huron Oil Company (Huron) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the eight hours per month the firm requires to complete the form, in addition to other peculiar hardships, placed a disproportionate burden on Huron. The Department of Energy therefore determined that Huron should be granted an exception which permits the firm to file estimated data reports.

Keystone Fuel Oil Co., 3/26/85; HEE–0104

Keystone Fuel Oil Company filed an application seeking retroactive exception relief from the reseller price regulations formerly codified in 10 CFR Part 212, Subpart F. In a Remedial Order issued on July 13, 1984, the OHA found that Keystone made certain overcharges in its sales of covered products during the period August 1973 through April 1974. If the application were approved, Keystone would be excused from its refund obligations under the Remedial Order. In this Decision, the OHA found that Keystone realized an unusually high level of profit during the year when the price violations occurred, which were apparently attributable to the excessive markups that Keystone charged its customers. The OHA also found that the firm's petroleum operations have been generally profitable in recent years. The OHA concluded that Keystone's retroactive exception request should be denied because it does not satisfy the retroactive exception relief standards.

Ryno Oil, 3/28/86; HEE–0129

On March 12, 1985, Ryno Oil (Ryno) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the twelve hours per month the firm requires to complete the form, in addition to other peculiar hardships, placed a disproportionate burden on Ryno. The Department of Energy therefore determined that Ryno should be granted an exception which permits the firm to file estimated data reports.

Interlocutory Order

Economic Regulatory Administration, 3/24/86; KRZ–0026

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Motion to Amend a Proposed Remedial Order (PRO) issued to Tonkawa Refining Company on May 31, 1985. The OHA determined that good cause existed for permitting the amendment and that Tonkawa would not be prejudiced thereby. It noted that in both the original and amended versions of the PRO, the nature of the alleged violations were the same. It noted further that the number of barrels of crude oil at issue were identical. It also determined that because ERA's proposed amendments would actually reduce the total amount of money which Tonkawa might be obliged to pay in restitution for the excessive entitlements benefits it allegedly received, it would benefit substantially from the amendment. Finally, the OHA noted that Tonkawa will be afforded the opportunity to file a Reply in which it can respond to the allegations

contained in the amended PRO. Accordingly, the motion to amend the PRO was granted.

Supplemental Order

J.R. Cone, 3/24/86; KCX-0007

The Federal Energy Regulatory Commission issued an order remanding to the Office of Hearings and Appeals a Remedial Order issued to J.R. Cone. The FERC Order affirmed the Remedial Order in part, but reversed the OHA's findings that (i) Cone improperly considered four wells on the Eubanks Lease as multiply completed; and (ii) received overcharges of $449,090.62 in his sales of crude oil from that lease. On remand, the OHA discussed the standard of proof applicable to enforcement proceedings before the DOE, stating that it had adhered to the "preponderance of the evidence" standard in assessing the merits of the evidence submitted in the Cone proceeding. Finally, the OHA implemented the Commission's order and reduced Cone's overcharges relating to the Eubanks Lease to $280,208.91.

Implementation of Special Refund Procedures

Jimmy's Gas Stations, Inc., 3/27/86; HEF-0102

The DOE issued a Decision and Order implementing a plan for the distribution of $6,275 received as a result of a consent order entered into by the DOE and Jimmy's Gas Stations, Inc. (Jimmy's) on May 12, 1980. The DOE determined that the Jimmy's settlement fund should be distributed to customers who purchased No. 2 heating oil and diesel fuel from Jimmy's during the period November 2, 1973 through May 4, 1974. The specific information requested in refund applications is provided in the Decision.

Key Oil Company, Inc., 3/26/86; HEF-0105

The DOE issued a Decision and Order implementing a plan for the distribution of $69,651 received as a result of a consent order entered into by the DOE and Key Oil Company, Inc. (Key, Inc.) on September 18, 1981. The DOE determined that the Key, Inc. settlement fund should be distributed to customers who purchased motor gasoline from Key, Inc. during the period March 1, 1979 through December 31, 1979. The specific information requested in refund applications is provided in the Decision.

Refund Applications

Aminoil U.S.A., Inc./Land O'Lakes, Inc., 3/26/86; RF139-22

The DOE issued a Decision and Order concerning an Application for Refund filed by an agricultural cooperative, Land O'Lakes, Inc., in connection with the Aminoil U.S.A., Inc. refund proceeding. In considering the application, the DOE found that Land O'Lakes purchased 19,599,198 gallons of propane from Aminoil during the consent order period. The DOE further found that since Land O'Lakes is an agricultural cooperative, it should not be required to provide a detailed demonstration of injury, as long as it certified that it would pass through to its member-customers the total amount of refund received. Having made the proper certification, the DOE granted Land O'Lakes a refund based on 100 percent of its allocable share as determined by the volumetric methodology. The total refund granted was $469,107, representing $291,068 in principal and $178,039 in accrued interest.

Boswell Oil Company/National Steel Corp. Armco Inc., 3/24/86; RF179-4, RF179-15

Applications for refund were filed by two end-users who purchased refined petroleum products from Boswell Oil Company during the consent order period. The applications were evaluated in accordance with the procedures set forth in Boswell Oil Co., 13 DOE ¶ 85,088 (1985). The OHA issued a Decision and Order approving the applications and issuing refunds totalling $18,518.22.

Gulf Oil Corporation/George's Gulf Service, et al., 3/25/86; FR40-00304, et al.

The DOE issued a Decision granting 12 Applications for Refund from the Gulf Oil Corporation consent order fund filed by resellers and retailers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $19,306 ($16,356 principal plus $2,950 interest).

Gulf Oil Corporation/Mac's Fuel Oil Service, Inc., et al., 3/27/86; RF40-01704, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit fund escrow account to 12 purchasers of Gulf refined petroleum products. The refunds from these firms totaled $17,312.

Gulf Oil Corporation/Navy Resale and Services Support Office, 3/28/86; RF40-1277

The DOE issued a Decision and Order granting a refund from the Gulf Oil Corporation deposit escrow fund to Navy Resale and Services Support Office (NRSSO), a reseller of Gulf refined petroleum products which operates service stations on Navy bases throughout the country. The applicant documented purchases of 11,511,112 gallons of Gulf products. In addition, NRSSO demonstrated that it would not have been required to reduce its selling prices to customers by the amount of the refund claimed. Based on this showing, the DOE granted NRSSO a refund of $16,692, representing $14,044 in principal and $2,648 in accrued interest.

Gulf Oil Corp./Theatres Service Company, et al., 3/28/86; RF40-208, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. In its Decision, the DOE granted the seven applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total $359,368, representing $302,365 in principal and $57,003 in interest.

Harris Enterprises, Inc. Widing Transportation, et al., 3/24/86; RF193-2, et al.

The DOE issued a Decision and Order approving refunds to 19 firms who sought refunds from the fund obtained as a result of a consent order entered into with Harris Enterprises, Inc. Each claimant certified that it purchased Harris petroleum products during the consent order period and stated that it was willing to rely on the information in the audit files in calculating its refund. The DOE determined that the entire escrow account should be proportionately distributed among the applicants according to the methodology set forth in *Harris Enterprises, Inc.*, 13 DOE ¶ 85,179 (1985). The refunds approved in this Decision total $21,200 principal and the total amount of interest accrued on that fund at the time of disbursement.

L & L Oil Company, Inc./Lee & Leon Oil Company, et al., 3/27/86; RF198-1, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by Lee & Leon Oil Company, *et al.* Each of the applicants had purchased refined petroleum products from L & L Oil Company, Inc. and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with L & L. Each of the six firms was identified in the DOE's audit files and was listed in the Appendix to the Decision. *See L&L Oil Company, Inc., Lowe Oil Company, and Moyle Petroleum Company*, 13 DOE ¶ 85,196 (1985). Each of the applicants agreed with the amounts listed in the Appendix, and each of these amounts was under the $5,000 threshold. After examining the applications submitted by the firms, the DOE concluded that each of the firms should receive the refund amount listed in the Appendix, plus its share of accrued interest. The total amount of refunds granted was $11,490.

Seminole Refining, Inc./Sellers Oil Company, Inc., 3/24/86; RF111-13

Sellers Oil Company, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm claimed a refund on the basis of its purchases of No. 2 fuel oil from Seminole during the period July 1, 1977 through August 13, 1980. Since that product was decontrolled effective July 1, 1976, the OHA determined that the firm was not eligible for a refund and that the request for refund should be denied.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Manito Oil and Propane, Kerschner's Gas Service, Inc., De Reu Skelgas Company, 3/27/86; RF26-24, RF26-29, RF26-30

The DOE issued a Decision and Order granting refunds from the Sid Richardson Carbon and Gasoline Company and Richardson Products Company deposit escrow account to three purchasers of Sid Richardson propane. Since none of the applicants claimed purchases above the threshold level, the DOE did not require them to submit a detailed showing of injury. The refunds to these firms total $90,929, representing $48,223 principal and $42,706 interest.

Standard Oil Company (Indiana)/American Cyanamid Company, 3/26/86: RF21-12400

The DOE issued a Decision and Order concerning an Application for Refund filed by American Cyanamid Company (ACC), an end-user of No. 6 fuel oil purchased directly from Standard Oil Company (Indiana), commonly known as Amoco, during the period March 1973 through December 1975. In accordance with the procedures established in the Amoco Special Refund Proceeding, the DOE determined that ACC should receive a refund based on the volumes of No. 6 fuel oil it purchased from Amoco during the consent order period. The total refund amount approved in this Decision is $1,726 ($1,309 principal plus $417 interest).

Standard Oil Company (Indiana)/Quality Oil Company, et al., 3/25/86; RF21-12583 et al.

The DOE issued a Decision and Order granting an Application for Refund filed by Quality Oil Company and 168 other firms from the Standard Oil Company (Indiana) consent order fund. The refunds approved in this Decision total $21,180 in principal and $11,924 interest.

Vickers Energy Corp./Minnesota, et al., 3/25/86; RQ1-267, et al.

The DOE issued a Decision approving in part the second-stage refund plans of Minnesota and South Carolina for use of funds from the Vickers, Pennzoil, Belridge, Amoco, Perry Gas, Charter, and Coline escrow accounts. Minnesota plans to use $58,630 plus interest for three energy conservation projects: (1) oat hull test burns, (2) energy conservation assistance for the commercial and industrial sectors, and (3) funding for the Energy Information Center. Because of pending litigation, however, the DOE cannot currently disburse second-stage Vickers and Pennzoil funds, and approval of the plan is contingent upon the DOE's success in this litigation. South Carolina proposes to use $404,600 of principal and interest for four energy-related projects: (1) motor fuel testing, (2) traffic light synchronization, (3) public transit fuel conservation, and (4) vanpool loans. The DOE found these programs restitutionary to injured consumers of motor gasoline and No. 2-D diesel fuel. Accordingly, the refund applications of Minnesota and South Carolina were partially granted.

Dismissals

The following submissions were dismissed:

Name and Case No.

Amerada Hess Corp.—RF189-16, RF189-17
Commonwheel Corp.—RF40-213
Coral Petroleum—RF189-2
Crown Central Petroleum Corp.—KRS-0002
Arthur J. Gobbeo—RF225-327
Philip Palma—RF225-57.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 24, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-9875 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from a fund of $368,000 obtained from American Pacific International, Inc., in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be filed by July 31, 1986, should conspicuously display a reference to case number HEF-0316 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of a settlement between American Pacific International, Inc. and DOE. The Consent Order entered in the case settled all disputes between DOE and American Pacific International concerning possible violations of DOE price regulations with respect to the firm's sales of petroleum products to its customers, and possible violations of the regulations governing the Crude Oil Entitlements program, during the period November 1973 through January 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All applications should be filed by July 31, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Implementation of Special Refund Procedures

April 22, 1986.

Name of Petitioner: American Pacific International, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0316.

On October 13, 1983, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving American Pacific International, Inc. (API). *See* 10 CFR Part 205, Subpart V. This Decision and Order establishes the final procedures for distributing funds the DOE received from API to qualified refund applicants. Information necessary to prepare motor gasoline refund applications appears in Section II of this Decision. Section II-A sets forth specific requirements applicable to each of the various types of claimants that are likely to file applications. A claimant should take particular note of those requirements applicable to its particular circumstances. Section II-B sets forth the general requirements which apply to all motor gasoline refund applications.

API was a producer of crude oil and a reseller of motor gasoline. DOE audits of API revealed possible regulatory violations in the firm's first sales of crude oil and in its sales of motor gasoline during the period of federal price controls. In order to settle all claims and disputes between API and the DOE, the two parties entered into a consent order on May 13, 1983. Under the terms of the consent order, API agreed to remit $368,000 plus interest to the DOE in 36 monthly installments beginning June 30, 1983, in settlement of alleged violations occurring between November 1, 1973 and January 27, 1981 (the consent order period). These funds

have been held in an interest-bearing escrow account established with the United States Treasury pending a determination by the OHA of their proper distribution. As of March 31, 1986, the API escrow account contained approximately $454,000, including accrued interest, although API has not completed making the scheduled payments.

On February 10, 1986, we issued a Proposed Decision and Order which set forth a tentative plan for distributing the API settlement funds. *See* 51 FR 6463 (February 24, 1986). In the Proposed Decision, we described a two-stage process for disbursing refunds. Specifically, we proposed to distribute funds in the first stage to identifiable purchasers of API motor gasoline who could demonstrate that they were injured by the firm's pricing practices during the consent order period. We further stated that if funds remain after these meritorious claims have been paid, a second-stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*).

The purpose of this Decision and Order is to establish the final procedures to be used for filing and processing claims in the first stage of the API proceeding. Because our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the fund, we will not establish second-stage procedures in this Decision. *See Office of Enforcement*, 9 DOE ¶82,508 (1981) *(Coline)*. Accordingly, it would be premature for us to address at this time issues raised by commenters concerning second-stage refunds.[1]

Because the consent order resolves alleged violations involving sales of both crude oil and refined products, we proposed to divide the fund into two pools. *See Amoco*, 10 DOE 88,193–94. As we discussed in the Proposed Decision, from our review of a Proposed Remedial Order (PRO) issued to the firm by ERA, it appears that 39.82% of the alleged overcharges settled by the consent order concerned API's production and sales of crude oil. Accordingly, 39.82 percent of the principal contained in the API escrow account has been set aside in a pool of crude oil funds. The remaining 60.18 percent of the API funds will be made available for distribution to purchasers of API motor gasoline who demonstrate that they were injured by API's alleged violations.

[1] Comments concerning second-stage refunds were submitted on behalf of the States of Arkansas, California, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia.

I. Refund Procedures for Crude Oil Claims

API, like other producers of crude oil, was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[2] To the extent that API miscertified old crude oil as new or stripper well crude oil, the impact of the violations was spread throughout the domestic refining industry by the operation of the Entitlements Program, 10 CFR 211.67. *See, e.g., Union Oil Co.* v. *DOE*, 688 F 2d 797 (Temp. Emer. Ct. App. 1982), *cert. denied*, 459 U.S. 1202 (1983).

Based on the OHA's report to the District court in the Stripper Well Exemption Litigation, *see Report of the Office of Hearings and Appeals, In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985), Fed. Energy Guidelines ¶90,507 at 90,620 (1985) (the OHA Stripper Well Report), the DOE announced that no claims for direct restitution would be accepted, and the Department would maintain overcharges associated with such violations in escrow to afford Congress the opportunity to select the means of making indirect restitution. *See* Statement of Restitutionary Policy, 50 FR 27400 (1985), Fed. Energy Guidelines ¶90,508 (1985).

In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). After soliciting comments from potentially aggrieved parties regarding the OHA's application of the policy to pending refund proceedings, the OHS stated in *Amber Refining, Inc.*, 13 DOE ¶85,217, (1985), that it would apply the Statement of Restitutionary Policy in all crude oil refund cases.

We have reviewed comments filed on behalf of the Comptroller of the State of California which argue that restitution for crude oil overcharges is best effected through distribution of funds to the States for use in energy-related programs. However, in view of the OHA's decision in *Amber Refining*, we have determined that the funds obtained from American Pacific that are attributable to alleged crude oil violations should be pooled with other crude oil funds for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

[2] The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain crude oil such as crude oil produced from "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil belonging to each tier classification in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Crude Oil Entitlements Program, 10 CFR 211.67.

II. Refund Procedures for Motor Gasoline Refund Claims

During the first stage of the refund process, the remainder of the API settlement fund will be distributed to purchasers of API motor gasoline who satisfactorily demonstrate that they were injured by API's alleged pricing violations. It appears from examination of audit records that Tesoro Petroleum Corporation bought significant volumes of API motor gasoline during the consent order period, although it is likely that there are other potential claimants as well. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) end users, i.e., consumers who used the API motor gasoline; (2) regulated entities not subject to the former federal oil price controls which used API products in their businesses or cooperatives which sold API products in their businesses; (3) and refiners, resellers or retailers who resold the API motor gasoline.

As in many prior special refund cases, we are adopting certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and will enable OHA to consider the refund applications in the most efficient manner possible.[3]

We are adopting a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by API during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater. Therefore, any purchaser may file a refund application

[3] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. *See* 10 CFR Part 205, Subpart V.

based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984).

Under the volumetric refund approach, a claimant will be eligible to receive a refund equal to the product of the number of gallons purchased times the per gallon refund amount.[4] At the present, however, we cannot determine precisely what the per gallon refund amount will be. Information set forth in the PRO suggests that API may have sold as little as 3.7 million gallons of motor gasoline during the audit period. If this figure represents the totality of API's motor gasoline sales during the consent order period, the per gallon refund would be approximately $.06 per gallon plus a share of the accrued interest. However, we note that information contained in the PRO relating to API's motor gasoline sales encompasses only the period from January 14 through March 31, 1974, whereas the consent order period spans the entire period during which petroleum prices were subject to federal regulation. Thus, there may be additional volumes of motor gasoline to be accounted for in determining a reasonably reliable per gallon refund amount. The Office of Hearings and Appeals has been unable to obtain gasoline sales volume figures for the entire consent order period because the firm has been unable to locate relevant records. *See* Memorandum of Telephone Conversation between Lorraine Loder, Esq. and Meri Arnett-Kremian, OHA Staff Attorney, dated May 20, 1985. For this reason, we will hold all refund applications until the close of the application period in order to determine whether the per gallon refund amount should be reduced in order to insure that sufficient funds are available to pay all valid claims.

(A) Specific Application Requirements for Each Category of Refined Product Refund Applicants

(1) Refund Applications by End Users. We are adopting a finding that end-users or ultimate consumers whose businesses are unrelate to the petroleum industry were injured by the alleged overcharges settled by the API consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM Oil Associates*). We have therefore concluded that end-users of API motor gasoline need only document their purchase volumes of API gasoline to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications by Regulated Firms or Cooperatives.—In addition, we are adopting the presumption that agricultural cooperatives and regulated firms, such as public utilities, that are required to pass on to their customers the benefit of any refund received will be exempted from the requirement that they make a detailed showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) *(Tenneco); Tenneco Oil Company/Farmland Industries, Inc.*, 9 DOE ¶ 82,597 (1982). Instead, those firms and cooperative groups should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of refund money. We note, however, that a cooperative's sales of API products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications by Resellers, Retailers and Refiners.—a. *Spot Purchasers.* If a claimant made only spot purchases, we believe that in most circumstances it should not receive a refund since it is unlikely to have experienced injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of API product at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981) *(Vickers)*. Therefore, a firm which made only spot purchases from API will not receive a refund unless it persents evidence rebutting the spot purchaser presumption and establishes the extent to which it was injured as a result of its purchases of API motor gasoline during the consent order period. *See Amoco*, 10 DOE at 88,200. Spot purchasers will *not* be able to use the presumption of injury for small claims described below.

b. *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We are also adopting the presumption that purchasers of API motor gasoline seeking small refunds were injured by API's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be effectively denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of API motor gasoline it purchased during the consent order period.[5] *See Texas Oil & Gas Corp.*, 12 DOE at 88,210; *Marion Corp.*, 12 DOE ¶ 85,014 (1984). In addition to the general information required from all applicants, it need only establish that it is a small-claims applicant.

c. *Refiners, Resellers and Retailers Seeking Refunds Greater than $5,000.* Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume informatoin. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 (1983); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). For periods in which the DOE regulations did not require retailers or resellers to compute cost bands, a firm will only be required to show the market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the

[4] A volumetric refund amount will be calcuated by dividing the motor gasoline portion of the settlement amount by our estimate of the total gallonage of motor gasoline sold by API during the period encompassed by the consent order.

[5] Claimants whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000 but who cannot establish that they did not pass through the price increases to their customers, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of indury. *See* Office of enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada); Vickers, 8 DOE at 85,396.

period of purchases from the consent order firm.

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all refund applicants should furnish the information set forth below.

1. An application for refund must be in writing, signed by the applicant, and specify that it pertains to the American Pacific International, Inc. Special Refund Proceeding, Case No. HEF-0316.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

3. Each applicant should specify how it used the product—i.e., whether it was a refiner, reseller, retailer or an end-user.

4. Each applicant must submit a monthly purchase schedule for API motor gasoline purchases during the consent order period, November 1, 1973 through January 27, 1981.

5. If an applicant purchased API motor gasoline from a reseller, it must establish its basis for belief that the motor gasoline originated with API and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of API products passed through the alleged API overcharges to its own customers.

6. The application for refund should contain the name, address, and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the applicant should furnish us with the name and telephone number of a contact person familiar with the facts set forth in the application who we may contact for additional information concerning the application. Unless otherwise specified, the refund check will be issued to the preparer.

7. If the applicant is affiliated or associated with API in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm.

8. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved.

9. If the applicant is a firm which did not actually purchase gasoline from API, but is a successor to an API customer, the applicant must provide evidence establishing that it, rather than API's former customer, is entitled to a refund.

10. Each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

11. All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

12. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

13. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

It is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by American Pacific International, Inc. pursuant to the consent order executed on May 13, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: April 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-9871 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Second Stage Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of second stage special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be used by state governments and autonomous American Indian tribes for filing Second Stage Applications for Refund from a fund of $30,938,071 obtained from Standard Oil Company (Indiana), now known as Amoco Corporation, in settlement of enforcement proceedings brought by the DOE.

ADDRESS: Applications for refund should conspicuously display a reference to case number HQF-0588, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds remaining after the conclusion of the first stage refund proceeding obtained as a result of a settlement between Standard Oil Company (Indiana), now known as Amoco Corporation, and DOE. The Consent Order entered in the case settled nearly all disputes between DOE and Amoco concerning possible violations of DOE price regulations with respect to the firm's sales of crude oil and refined petroleum products during the period March 1973 through December 1979.

The state governments listed in the Appendix to the Decision and Order set out below may file Applications for Refund. In addition, autonomous American Indian tribal groups may submit separate applications for appropriate portions of the refunds which would otherwise go to the states bordering their reservations. All Applications should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 24, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Second-Stage Refund Procedures

April 24, 1986.

Name of petitioner: Standard Oil Company (Indiana).

Date of filing: June 21, 1985.

Case number: HQF-0588.

This determination announces completion of the first-stage refund process for distributing $72 million plus interest which the Department of Energy (DOE) received under a 1980 consent order from Standard Oil Company (Indiana), now known as Amoco Corporation. Approximately $30.94 million attributable to refined product sales during the consent order period remains in the Amoco escrow account after all claims have been satisfied. This Decision discusses how these unclaimed funds will be distributed.

I. Background

The funds at issue in this proceeding were obtained from Amoco through a February 14, 1980 consent order with the DOE. *See* 45 FR 12287 (1980); *See also* 45 FR 26747 (1980). The consent order made available approximately $72 million for distribution under special refund procedures established by the OHA. *See Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) at 88,193.

Final procedures for refunding the money in the Amoco escrow account to injured consumers were established in *Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco I*). The OHA divided the settlement fund of $72 million plus interest into two parts; one part (30.7 percent, or $22.1 million) was allowable to Amoco's crude oil sales. The other part (69.3% or $49.9 million) was used to pay claims filed by purchasers of Amoco refined products.

As of March 31, 1986, the OHA had received 12,580 first-stage claims from injured parties and disbursed nearly $30.9 million in principal and interest from the interest-bearing Amoco escrow account to claimants. Virtually all of these claims have now been adjudicated, a sufficient reserve for remaining claims has been calculated, and new applications will no longer be accepted.

On November 16, 1982, the OHA determined that unclaimed funds from the motor gasoline and middle distillate refund pools should be distributed to governments of the states in which these Amoco products were sold to be used for the benefit of injured consumers.[1] *Standard Oil Co. (Indiana),* 11 DOE ¶ 85,185 (1983) (hereinafter cited as *Amoco II*). At that time $24 million ($21 million for motor gasoline and $3 million for middle distillates) was made available to states to distribute to energy consumers within their states. To date, the OHA has disbursed over $22 million in Amoco refunds to 39 state governments and the District of Columbia and $18,133 to eight federal native American tribal reservations through the second-stage refund process.[2]

II. Remaining Funds

At this point, $70.37 million remains in the Amoco escrow account. Of that amount, $38.03 million[3] represents the current reserve for distribution in accordance with DOE policy for escrow funds attributable alleged crude oil violations. An additional $1.40 million is reserved for second stage refunds allocated in *Amoco II* but not yet disbursed. That leaves $30.94 million, including interest, attributable to refined products.

The following table indicates the source of that amount, after all disbursements to date:

Product pool	Amount
Motor gasoline	$15,407,461
Natural gas liquids	7,334,232
Residual fuel oil and related products	3,889,615
Middle distillates	2,032,327
Jet fuel and aviation gasoline	2,274,436
Total	$30,938,071

III. Distribution of Remaining Funds

The funds remaining from the product pools should be distributed to state governments for indirect restitution. Only states in which Amoco sold the product concerned are eligible to participate, *Amoco I* at 88,202. Each state's share is based on the relative impact of the alleged Amoco overcharges or, in other words, proportional to the ratio which statewide sales of that Amoco product during the consent order period bears to national sales of the Amoco product. This information is summarized in the Appendix. This impact differs from the distribution of refined product sales generally. According to reports which Amoco filed with the Energy Information Administration (EIA), which listed Amoco's sales in each of the 48 contiguous states for each refined product, Amoco's sales were heavily concentrated in a few states, especially in the industrial midwest and Texas. For example, Amoco sold almost one-third of all its products in only three Midwestern states: Illinois, Michigan, and Indiana. Amoco sold 14.5 percent of all of its products in Illinois, 9.9 percent in Michigan, and 6.3 percent in Indiana. Sales in Texas accounted for another 10.7 percent of Amoco's nationwide sales of petroleum products other than crude oil. Sales in these four states—Illinois, Indiana, Michigan, and Texas—accounted for 41.4 percent of all sales made by Amoco during the relevant period. By contrast, these four states accounted for only 18 percent of the total refined products sold nationwide.

As in *Amoco II,* certain autonomous American Indian tribes are eligible to receive some portion of the second-stage refund moneys for the consumers they represent. *See note 1, supra.* The federally-recognized Indian tribes are self-governing political entities that are autonomous from the states within whose borders their reservations lie. *Worcester v. Georgia,* 31 U.S. 515 (1832); *William v. Lee,* 358 U.S. 217 (1959). Consequently, we will accept plans from tribal organizations for using a share of the Amoco funds attributable to products consumed by members residing on their reservations. Those plans should meet the general requirements for state plans which are outlined in this decision. Tribal plans should also include information indicating that tribal members residing on the reservation are not eligible to participate in state programs being funded by the Amoco second-stage refund moneys and a proposal for allocating a portion of state funds to the tribal organization. *See, e.g., Standard Oil Co. (Indiana)/The Navajo Nation,* 13 DOE ¶ 85,266 (1985) and cases cited therein. Of course, many residents of reservations may already be served

[1] Since federally recognized native American tribal organizations are self-governing political entities that are autonomous from the states within whose borders their reservations lie and often administer energy programs that are independent of state programs, tribal organizations were permitted to use portions of the states' shares of the Amoco motor gasoline and middle distillate refunds. *Amoco II* at 88,299,300. The same principles will be applied in this decision.

[2] Some states have only received portions of the refunds allotted to them. In these instances, the states have been required to revise and resubmit portions of their restitutionary plans. *See, e.g., Standard Oil Co. (Indiana)/Iowa,* 12 DOE ¶ 85,005 (1985).

[3] That sum is derived by multiplying 30.7% by the total current equity value ($123,899,456.14) of the Amoco escrow account. The DOE's Statement of Restitutionary Policy governs these funds. 50 FR 27402 (July 2, 1985). The policy statement announced that the Department would maintain crude oil funds in escrow to afford the Congress the opportunity to select the means of making indirect restitution. Should the Congress decline to act on the issue by the fall of 1986, the DOE stated that the funds should be paid to the miscellaneous receipts account of the United States Treasury in order to benefit all Americans.

through agreements between tribal organizations and the respective state governments, and those tribal organizations need not apply for refund money separately from state governments.

IV. Application Procedure

Funds will be disbursed upon the approval of a plan for spending the money submitted by a jurisdiction in which Amoco products were consumed, as set forth in the Appendix. These plans should meet the general restitutionary objective of this proceeding. Plans will be scrutinized to ensure that administrative costs are minimized. Refunds may be used for new energy-related projects, but they must not be used to implement projects or programs that would be funded regardless of this distribution. In other words, the refund money distributed must be used to supplement, not supplant, any state or federal funds which are already budgeted tor those purposes. Each program must be implemented within a reasonable period following receipt of the funds. Any interest earned after refund moneys have been disbursed shall be allotted to the projects for the purposes approved by OHA.

States should notify affected members of the public that the state is eligible to receive a refund in this case. *See Charter Co.*, 12 DOE ¶ 85,208 (1985) at 88,677–8. The public should be informed about the type of restitutionary plan which each state proposes to submit for approval of the OHA, and accorded an opportunity to contribute its ideas in the course of that process. Each application submitted must contain a statement describing the type of notice that was provided in the course of preparing the proposed plan. *Id.*

Each plan submitted should follow the broad guidelines discussed above, and must include the following information: (1) A description of the programs to be funded; (2) the time frame for implementation of the programs; (3) a statement explaining whether each program is an enlargement of an existing program or a new project; (4) an explanation of the manner in which consumers of refined petroleum products will benefit from the programs; (5) a statement certifying that the submitting agency has authority under state law to submit the plan; (6) a statement certifying either (a) that the tribal organizations responsible for administering reservations located within a state have agreed that the state's proposal will provide an equitable share of the allocated funds for tribal members residing on the reservation or (b) that those tribal organizations will file a separate proposed plan; (7) a statement describing the type of public notice that was provided by the state government in the course of preparing the proposed plan; and (8) a statement committing the agency or office responsible for administering the plan to filing with the OHA a post-plan report, which include a certification that the funds were spent in accordance with the DOE-approval plan. For further information concerning plan approvals, see *Standard Oil Co. (Indiana)/Maryland*, 13 DOE ¶ 85,075 (1985).

V. Conclusion

This determination concludes the distribution of $72 million plus interest to injured purchasers of Amoco products. All first-stage claims remaining have been satisfied, and an additional $30 million in principal and interest will be distributed in a second-staged refund proceeding. State governments and qualified American Indian tribal groups are invited to apply for these funds.

It Is Therefore Ordered That:

(1) The states set forth in the Appendix to this Decision and Order and qualified American Indian tribal groups may submit plans for the use of $30.9 million remaining in the Amoco escrow account. Each state's share of those funds including interest as of March 31, 1986 is set forth in the Appendix.

(2) This is a final order of the Department of Energy.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: April 24, 1986.

APPENDIX.—STATE'S SHARES OF UNCLAIMED AMOCO FUNDS

State	Percent of Amoco's sales in state	State share
Alabama	1.7	$525,947
Alaska	0.0	0
Arizona	0.0	0
Arkansas	0.6	185,628
California	0.3	92,814
Colorado	1.3	402,195
Connecticut	0.7	216,566
Dist. of Col.	0.3	92,814
Delaware	0.1	30,938
Florida	2.9	897,204
Georgia	3.1	959,080
Hawaii	0.0	0
Idaho	0.5	154,690
Illinois	14.4	4,455,082
Indiana	6.3	1,949,098
Iowa	3.2	990,018
Kansas	3.2	990,018
Kentucky	0.3	92,814
Louisiana	1.7	525,947
Maine	0.3	92,814
Maryland	2.0	618,761
Massachusetts	0.9	278,443
Michigan	9.9	3,062,869
Minnesota	3.5	1,082,632
Mississippi	1.0	309,381
Missouri	4.3	1,330,337
Montana	0.4	123,752
Nebraska	1.1	340,319
Nevada	0.0	0
New Hampshire	0.1	30,938
New Jersey	1.5	464,071
New Mexico	0.3	92,814
New York	2.7	835,328
North Carolina	2.4	742,514
North Dakota	1.4	433,133
Ohio	1.1	340,319
Oklahoma	1.1	340,319
Oregon	0.0	0
Pennsylvania	2.6	804,390
Rhode Island	0.2	61,876
South Carolina	1.1	340,319
South Dakota	0.9	278,443
Tennessee	1.8	556,885
Texas	10.6	3,279,436
Utah	1.3	402,195
Vermont	0.1	30,938
Virginia	2.8	866,266
Washington	0.3	92,814
West Virginia	0.4	123,752
Wisconsin	2.8	866,266
Wyoming	0.5	154,690
Total	100.0	30,938,071

Source: Sales of Petroleum Products by State, as reported by Amoco to the Energy Information Administration. Numbers do not add to total because of rounding.

[FR Doc. 86–9873 Filed 5–1–86; 8:45 am]

BILLING CODE 6450–01–M

Modification of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces that it is extending the deadline for filing Applications for Refund from funds obtained from Mobil Oil Corporation in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by August 1, 1986, should conspicuously display a reference to case number HEF–0508, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the

Department of Energy, 10 CFR 205.282(c), notice was given of the issuance of a Decision and Order which implemented special refund procedures on December 24, 1985. 50 FR 53470 (December 31, 1985). The Decision and Order established procedures to distribute funds obtained as a result of a settlement between Mobil Oil Corporation and the DOE. The settlement resolved all disputes between DOE and Mobile concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period March 1973 through January 1981, and its sales of crude oil during the period June 1979 through January 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. The Department of Energy is hereby extending the deadline for receiving such applications. Applications will now be accepted beyond the deadline of May 1, 1986, as announced in the December 24, 1985 Decision and Order. All applications should be postmarked by August 1, 1986, and should be sent to the address set forth at the beginning of this notice. Applications filed after that date will be accepted only if due cause for delay is demonstrated. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-9872 Filed 5-1-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3010-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed April 21, 1986 through April 25, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860161, Draft, FHW, CA, CA-85 Transportation Corridor Construction, between US 101 in San Jose and I-280 near Stevens Creek Boulevard in Cupertino, Santa Clara County, Due: June 23, 1986, Contact: Dave Eyres (916) 551-1314.

EIS No. 860162, Draft, SCS, OK, Dry Creek Watershed, Protection and Flood Prevention Plan, Lincoln County, Due: June 18, 1986, Contact: Roland Willis (405) 624-4360.

EIS No. 860163, Final, FHW, MT, I-15 Beltview Interchange Construction, I-15 to Colonial Drive, Lewis and Clark County, Due: June 2, 1986, Contact: William Dunbar (406) 444-5310.

EIS No. 860164, Draft, NRC, CA, Humboldt Bay Power Plant, Unit 3, Decommission, Approval, Humboldt County, Due: June 16, 1986, Contact: Peter Erickson (301) 492-8194.

EIS No. 860165, Draft, Joint Lead, AFS, BLM, CA, Lassen National Forest, Geothermal Exploration, Development, and Production, Leasing, Due: June 16, 1986, Contact: Curt Spalding (916) 257-2151.

EIS No. 860166, Final, FHW, TN, Tn-386 Extension, I-65 to Hendersonville Bypass, Construction, Davidson and Sumner Counties, Due: June 2, 1986, Contact: Thomas Ptak (615) 736-5394.

EIS No. 860167, Draft, IBR, UT, Uinta Basin Unit Construction and Operation, Colorado River Water Quality Improvement Program, Duchesne and Uintah Counties, Due: July 28, 1986, Contact: Jay Henry (801) 379-1172.

EIS No. 860168, DSuppl, BLM, WY, Grass Creek and Cody Resource Areas, Wilderness Suitability, Owl Creek Wilderness Study Area, Designation, Hot Springs County, Due: July 31, 1986, Contact: Tim Smith (307) 347-9871.

Amended Notice:

EIS No. 860126, Final, BLM, AK, Central Yukon Planning Area, Land and Resource Management Plan, Due: May 15, 1986, Published FR 4-11-86, Review period extended.

Dated: April 29, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-9943 Filed 5-1-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3011-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 14, 1986 through April 18, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65088-CA, Rating EC2, Tahoe Nat'l Forest, Land and Resource Mgmt. Plan, CA. SUMMARY: EPA expressed concerns that forest activities such as timber harvests and vegetative type conversions will degrade water quality, and suggested that timing and guidelines applied to these activities be modified to protect water quality.

ERP No. D-COE-C36103-NY, Rating EC2, Sauquoit Creek Flood Control Plan, NY. SUMMARY: EPA has reviewed the main report and the draft EIS and concurs with the selected high-flow diversion channel alternative. However, there are environmental concerns regarding the implementation and extent of the wetlands mitigation and adequacy of the discussion of cumulative aquatic and wetland impacts.

ERP No. DS-COE-F35029-MN, Rating LO, Upper Mississippi River Lower Pool 5 Channel Maintenance and Weaver Bottoms Rehabilitation Plan, Dredged Material Maintenance, MN. SUMMARY: EPA has no objections to the proposed activity.

ERP No. D-JUS-L81007-OR, Rating EC2, Sheridan Federal Correctional Institution Complex, Construction and Operation, OR. SUMMARY: The draft EIS presents a somewhat confusing discussion of the water supply for the proposed correctional facility. It is not clear how water would be supplied to the facilty, or how supplying this water need would affect the natural or socio-economic environments; nevertheless, the draft EIS provides a good evaluation of the environmental consequences of the action and means for mitigating its impacts.

Final EISs

ERP No. F-AFS-E65034-AL, Alabama Nat'l Forests, Land and Resource Mgmt. Plan, AL. SUMMARY: EPA has no serious objections to the implementation of the preferred alternative. EPA's major concerns relate to the monitoring and follow-up on the use of Best Management Practices (BMP's) to ensure the protection of the Forest's environmental quality. In particular, we are suggesting on-going water quality monitoring—both long-term sampling of a cross-section of watersheds and statistical sampling of regular forest

events (e.g. road construction, timber management; etc.).

ERP No. F–AFS–G65042–00, Ouachita Nat'l Forest, Land and Resource Mgmt. Plan, AL. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. F–CDB–K89059–CA, San Bernadino Enterprise Zone Application, Designation and CDB Grant, CA. SUMMARY: EPA had no comments to offer on this final EIS.

ERP No. F–FHW–L50002–WA, US 101/Palix River Bridge Replacement and Approach and County Road Connections Realignment, 404 Permit Sect. 9 (CGD) Permit, WA. SUMMARY: The final EIS fully resolved EPA's environmental concerns and a more environmentally benign alternative was selected as the preferred alternative. EPA commended the lead agency for producing an especially clear and readable decision making document.

Dated: April 29, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–9944 Filed 5–1–86; 8:45 am]

BILLING CODE 6560–50–M

[OPPE–FRC–3011–8]

Open Meeting of the New Source Performance Standards for Residential Wood Combustion Units, Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), EPA is giving notice of an open meeting of the Advisory Committee on New Source Performance Standards for Residential Wood Combustion Units.

The next meeting is scheduled on May 19 and 20, 1986, and will be held at the Capitol Park International, North Lobby Center, 800 Fourth Street, SW., Washington, DC 20024. Each day the meeting will begin at 9:00 a.m. and will run until completion.

The purpose of the May meeting is to work on the following substantive issues: test methods (sampling train, gas flow measurement procedures); stove certification procedures (notification requirements, submittal of data, EPA approval); and decisions on which laboratories will do certification testing and how thoses laboratories are selected and accredited. At this meeting, we anticipate the group will also begin working on the draft language of the proposed rule.

If interested in attending, or in receiving more information, please contact Kathy Tyson at (202) 382–5352.

Dated: April 24, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86–9903 Filed 5–1–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59759; (FRL–2997–7)]

Certain Chemicals Premanufacture Notices; Kay-Fries, Inc., et al.

Correction

In FR Doc. 86–7632, appearing on page 12556, in the issue of Friday, April 11, 1986, make the following correction.

In the second column, in "Y86–110", thirteenth line "future" should read "fume".

BILLING CODE 1505–01–M

[OPTS–59216; FRL–2997–8]

Test Marketing Exemption Applications; Westvaco Corp. et al.

Correction

In FR Doc. 86–7631, beginning on page 12556, in the issue of Friday, April 11, 1986, make the following correction.

On page 12557, under "T86–34", fourth line, "benzenesulfonamide" was misspelled.

BILLING CODE 1505–01–M

[OPTS–59219; FRL–3009–7]

Toxic Substances; Fatty Acid Ester; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: May 19, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59219]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. R–201, 401 M Street, S.W, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, S.W, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86–40

Close of Review Period. May 25, 1986.
Manufacturer. Confidential.
Chemical. (G) Fatty acid ester.
Use Production. (G) Wood coating.
Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

Dated: April 18, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–9413 Filed 5–1–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59762; FRL–3009–5]

Toxic Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of

May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86–118, 86–119 and 86–120—May 4, 1986.

Y 86–121, 86–122 and 86–123—May 5, 1986.

Y 86–124, 86–125 and 86–126—May 6, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–118

Manufacturer. S.C. Johnson and Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86–119

Manufacturer. S.C. Johnson and Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86–120

Manufacturer. S.C. Johnson and Son, Inc.

Chemical. (G) Water soluble acrylate random copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86–121

Manufacturer. S.C. Johnson and Son, Inc.

Chemical. (G) Styrene-acrylate random copolymer emulsion.

Use/Production. (G) Emulsion polymer/film former for floor polich. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86–122

Manufacturer. Confidential.

Chemical. (G) Chain stopped alkyd resin.

Use/Production. (S) Industrial coating resin component. Prod. range: 20,000–100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–123

Manufacturer. Confidential.

Chemical. (G) Vinyl modified alkyd resin.

Use/Production. (S) Industrial coating resin component. Prod. range: 115,000–138,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–124

Importer. Confidential.

Chemical. (G) Copolymer of acrylic and methacrylic esters.

Use/Imports. (S) Industrial, commercial and consumer polymer for use in coatings, adhesives, and inks. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 86–125

Manufacturer. Confidential.

Chemical. (G) Polyurethane dispersion.

Use/Production. (G) An additive to be used in the textile industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 4 hrs/da.

Environmental Release/Disposal. 25 kg/day washout. Disposal by city sewer system.

Y 86–126

Manufacturer. Confidential.

Chemical. (G) Polyurethane dispersion.

Use/Production. (G) An additive to be used in the textile industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 4 hrs/da.

Environmental Release/Disposal. 25 kg/day washout. Disposal by city sewer system.

Dated: April 18, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–9414 Filed 5–1–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51620; FRL–3009–4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-two PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–890 and 86–891—July 9, 1986.

P 86–892 and 86–893—July 12, 1986.

P 86–894, 86–895, 86–896, 86–897, 86–898, 86–899, 86–900, 86–901, 86–902, 86–903, 86–904, 86–905, 86–906, 86–907, 86–908, 86–909, 86–910, 86–911 and 86–912—July 13, 1986.

P 86–913, 86–914, 86–915 and 86–916—July 14, 1986.

P 86–917, 86–918, 86–919, 86–920 and 86–921—July 15, 1986.

Written comments by:

P 86–890 and 86–891—June 9, 1986.

P 86–892 and 86–893—June 12, 1986.

P 86–894, 86–895, 86–896, 86–897, 86–898, 86–899, 86–900, 86–901, 86–902, 86–903, 86–904, 86–905, 86–906, 86–907, 86–908, 86–909, 86–910, 86–911 and 86–912—June 13, 1986.

P 86-913, 86-914, 86-915 and 86-916—June 14, 1986.

P 86-917, 86-918, 86-919, 86-920 and 86-921—June 15, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51620]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-890

Manufacturer. Confidential.

Chemical. (G) Polymer of aclrylic acid esters, an aromatic vinyl nonomer, and a nitrile monomer.

Use/Production. (G) Print binder for textile goods. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 1 to 10 kg released to water. Disposal by publicly owned treatment works (POTW).

P 86-891

Importer. Ilford Incorporated.

Chemical. (S) 6-(2-hydroxy-ethoxy)-7-methoxy-2,3-dimethyl-quinoxaline.

Use/Import. (S) Commercial and consumer bleach catalyst in silver - dye bleach photo processing solution. Import range: 200-235 kg/yr.

Toxicity Data. Acute oral: 1,630 mg/kg; Irritation: Skin - Non-irritant, Eye - Irritant; EC_{50} 24 h r (Daphnia magna): 400 mg/1; LC_{50} 96 hr (Zebra fish): 68 mg/l; Ready biodegradability test: Not biodegradable.

Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da, up to 9 da/yr.

Environmental Release/Disposal. 0.010 to 0.100 kg/batch released to air, water and land. Disposal by landfill and scrubber.

P 86-892

Importer. Confidential

Chemical. (G) Aminophenyl-(substituted)carbomoncyclic sulfonamide.

Use/Import. (S) Industrial intermediate for the manufacture of dyes. Import range: Confidential.

Toxicity Data. Acute oral: 7,100 mg/kg; Ames test: Positive.

Exposure. Processing: dermal, up to 3 hrs/da, up to 19 da/yr.

Environmental Release/Disposal. 1 to 2 lbs/batch released to water. Disposal by POTW.

P 86-893

Manufacturer. Formica Corporation.

Chemical. (G) Modified triazine-formaldehyde polymer.

Use/Production. (S) Site-limited thermosetting laminating resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal.

Environmental Release/Disposal. Release to air, water and land. Disposal by POTW, incineration or sanitary landfill.

P 86-894

Manufacturer. Confidential.

Chemical. Alkanoate metal complex.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: > 3,200 mg/kg; Irritation: Skin - Slight, Eye - Moderate; Skin sensitization: Negative.

Exposure. Manufacture and use: dermal, a total of 1 worker, up to 0.25 hr/da, up to 52 da/yr.

Environmental Release/Disposal. No release.

P 86-895

Manufacturer. Confidential.

Chemical. (G) Reaction product of polysubstituted alkanes.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. No release.

P 86-896

Importer. SEH America.

Chemical. (G) Siloxanes and silicones, dimethyl, methyl (mercaptoalkyl) trimethyl end blocked.

Use/Import. (G) Open system, non-dispersive application. Import range: Confidential.

Toxicity Data. Acute oral: > 34.6 g/kg; Acute dermal: > 3 g/kg; irritation: Skin-minimal, Eye-Mild; Inhalation: > 1.1 g/m_3; Skin sensitization: Negative.

Exposure. Processing: dermal and ocular, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

P 86-897

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, mono and di-(2-ethylhexyl) esters, compounds with N,N-dimethyl alkylamine.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. Irritation: Skin - Non-irritant, Eye - Irritant.

Exposure. Manufacture: dermal, a total of 4 workers, up to 6 hrs/da, up to 16 da/yr.

Environmental Release/Disposal. 0.001 to 0.005 kg/batch released to air. Disposal by company treatment facility.

P 86-898

Manufacturer. Confidential.

Chemical. (G) N-tallow alklyl-2,2'-iminobis-propanol, inorganic salt.

Use/Production. (G) Lubricant additive. Prod. range: 110,000-440,000 kg/yr.

Toxicity Data. Irritation: Skin - Irritant, Eye - Irritant.

Exposure. Manufacture: dermal, a total of 6 workers, up to 6 hrs/da.

Environmental Release/Disposal. 0.001 to 0.3000 kg/batch released to air and water. Disposal by company treatment facility.

P 86-899

Manufacturer. Confidential.

Chemical. (G) calcium sulfonate.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10 workers, up to 4 hrs/da, up to 18 da/yr.

Environmental release/Disposal. Release unknown. Disposal by POTW, approved landfull, heat recovered, in plant treatment, Clean Air Act, Clean Water Act and/or Resource Conservation and Recovery Act (RCRA).

P 86-900

Manufacturer. Confidential.

Chemical. (G) Substituted phenol.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 85 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW, in plant treatment, recycle or burning and Clean Water Act.

P 86-901

Importer. Confidential.

Chemical. (S) Cuprate (4-), [5-(acetylamino)-4-hydroxy-3-[[5-hydroxy-6-[[(2-hydroxy-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-7-sulfo-2-naphthalenyl]azo]-2, 7-naphthalene disulfonate(6-)]-tetrasodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 86-902

Importer. Confidential.

Chemical. (S) Cupate (4-)[2[[2,4-dihydroxy-3-[[2-hydroxy-5-[[2-(silfooxy)ethyl]sulfonyl]phenyl]azo]-phenyl]azo]-4,8-naphthalene disulfonate(-6)]-trisodium salt.

Use/Import. (S) Reactive dye for textiles. Import range: 30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

4P 86-903

Manufacturer. Amoco Corporation.

Chemical. (G) Succinate ester amide.

Use/Production. (G) Lubricant oil additive. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Not corrosive.

Exposure. Confidential.

Environmental Release Disposal. No release.

P 86-904

Manufacturer. Rohm and Haas Company.

Chemical. (G) Polymer of alkyl methacrylate and substituted methacrylamide.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: a total of 4 workers, up to 45 min/da, up to 9 da/yr.

Environmental Release/Disposal. .5 to 1.8 kg/batch released to control technology. Disposal by incineration.

P 86-905

Manufacturer. Confidential.

Chemical. (G) Functionalized ethene copolymer.

Use/Production. (S) Industrial and commercial plastics additive. Prod. range: 80,000-73,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 13 workers, up to 1 hr/da, up to 333 da/yr.

Environmental Release/Disposal. 22 kg/day released to land. Disposal by incinertion or landfill.

P 86-906

Importer. SEH America.

Chemical. (G) Mercaptoalkyl, alkylpolysiloxane.

Use/Import. (G) Open system, non-dispersive application. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

P 86-907

Importer. SEH America.

Chemical. (G) Siloxanes and silicones, methyl, mercaptoalkyl hydrolysis products with tetraethoxysilane.

Use/Import. (G) Open system, non-dispersive application. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 50 workers, up to 8 hrs/da, up 240 da/yr.

Environmental Release/Disposal. No data submitted.

P 86-908

Manufacturer. Confidential.

Chemical. (G) Ester copolymer.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 27 da/yr.

Environmental Release/Disposal. Release unknown. Disposal by POTW, landfill, heat recovered by Clean Air Act, Clean Water Act, RCRA, and/or in-plant treatment.

P 86-909

Manufacturer. Confidential.

Chemical. (G) Alkylated aromatic compound.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 75 da/yr.

Environmental Release/Disposal. Release unknown. Disposal by POTW, landfill, heat recovered by Clean Air Act, Clean Water Act, RCRA, and/or in-plant treatment.

P 86-910

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl arylamine.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure; Manufacture: a total of 2 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-911

Importer. Ajinomoto U.S.A., Inc.

Chemical. (G) Amine adduct of epoxy resin.

Use/Import. (S) industrial and commercial curing agent and accelerator for epoxy resin. Import range: 1,200-6,000 kg/yr.

Toxicity Data. Acute oral: 20 g/kg; Irritation: Skin—Mild; Skin sensitization: Negative.

Exposure. Use: dermal and inhalation, a total of 5 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Release to air and water.

P 86-912

Importer. Ajinomoto U.S.A., Inc.

Chemical. (G) Amine adduct of epoxy resin.

Use/Import. (S) Industrial and commercial curing agent and accelerator for epoxy resin. Import range: 1,200-6,000 kg/yr.

Toxicity Data. Acute oral: 20 g/kg; Irritation: Skin—Mild; Skin sensitization: Negative.

Exposure. Use: dermal and inhalation, a total of 5 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Release to air and water.

P 86-913

Manufacturer. NL Industries, Inc.

Chemical. (G) High solids oxirane/anhydride polyester resin.

Use/Production. (G) A polyester resin to be used in an open, non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 86-914

Manufacturer. NL Industries, Inc.

Chemical. (G) High solids oxirane/anhydride polyester resin.

Use/Production. (G) A polyester resin to be used in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-915

Importer. Confidential.
Chemical. (G) Phenolic polyester.
Use/Import. (G) Coating. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW and incineration.

P 86-916

Manufacturer. Confidential.
Chemical. (G) Alkyl fatty ester.
Use/Production. (G) Finishes, polishes, mold release agent.
Prod. range: Confidential.
Toxicity Data: No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-917

Importer. Confidential.
Chemical. (G) Alkyl diquaternary.
Use/Import. (G) Catalyst in plastic resins. Import Range: Confidential.
Toxicity Data. No Data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-918

Manufacturer. Lawter International, Inc.
Chemical. (G) Linseed oil based terephthalic alkyd.
Use/Production. (S) Industrial printing ink vehicle. Prod. range: 22,000-30,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers, up to 10 hrs/da, up to 3 da/yr.
Environmental Release/Disposal. 0.1 to 2 kg/day released to air and water with 0.5 to 2 kg/day to land. Disposal by POTW and approved landfill.

P 86-919

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl, substituted triazolyl (substituted) alkanamide.
Use/Production. (G) Contained use in an article. Prod. range: 650 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 26 workers, up to 1.0 hr/da, up to 5 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch disposed by biological treatment with less than 3 kg/batch incinerated.

P 86-920

Manufacturer. Confidential.
Chemical. (G) Substituted-3-sulfoalkylbenzothiazole, salt.
Use/Production. (G) Chemical intermediate. Prod. range: 450-500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 9 workers, up to 0.7 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release. Less than 2 kg/batch incinerated.

P 86-921

Manufacturer. Confidential.
Chemical. (G) (Substituted aromatic heterocyclic) substituted-3-sulfoalkyl.
Use/Production. (G) Chemical intermediate. Prod. range: 200 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 48 workers, up to 1.0 hr/da, up to 10 da/yr.
Environmental Release-Disposal. No release. Less than 0.5 kg/batch disposed by biological treatment with less than 1 kg/batch incinerated.

Dated: April 18, 1986.

Denise Devoe,

Acting Director,

[FR Doc. 86-9415 Filed 5-2-86; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Organization; Farm Credit System Capital Corporation

AGENCY: Farm Credit Administration.

ACTION: Notice; Amendment to Articles of Incorporation of the Farm Credit System Capital Corporation.

SUMMARY: On April 14, 1986, the Farm Credit Administration ("FCA") amended Article III of the Articles of Incorporation of the Farm Credit System Capital Corporation ("Corporation"), chartered by the FCA on February 24, 1986 (51 FR 7121), pursuant to Title IV, Part D1, section 4.28A of the Farm Credit Act of 1971, as amended ("Act"), relating to the principal offices of the Corporation. As amended, Article III provides that the principal business offices of the Corporation shall be located in the greater metropolitan area of Kansas City, specifies that the business and operations of the Corporation shall be conducted from such offices, and provides that all meetings of the board of directors of the Corporation shall be held in that area, except that a meeting of the board of directors may be held outside the metropolitan area of Kansas City upon a resolution adopted by at least 80 percent of the members of the board. The Articles of Incorporation were also amended to provide that the respective initial terms of the board of directors of the Corporation shall end on December 31, 1986 and December 31, 1987, and that subsequent terms of related and appointed directors shall be for 2 calendar years.

The FCA has determined that Kansas City is a central and strategic location for servicing the loans and other assets likely to be purchased and administered by the Corporation, and from which the business operations and board meetings of the Corporation can be conveniently and efficiently conducted. The FCA believes that the interests of the Corporation will best be served by having the Corporation's principal business offices in a city other than one in which the principal offices of another Farm Credit System ("System") institution is located, and by assuring that meetings of the board of directors of the Corporation are held, as a matter of course, in the Corporation's area in which its principal business offices are located and not generally in conjunction with board meetings of tother System institutions. However, the FCA also believes that the board should be able to hold occasional meetings outside that area.

In order to implement the amendment to Article III of the Articles of Incorporation the FCA has also amended paragraph (c) of 12 CFR 611.1142 to delete reference in that section to the principal offices of the Corporation and to make the language of the section consistent with the related amendment to Article III of the Corporation's Articles of Incorporation. (Published elsewhere in today's **Federal Register**). The FCA believes that the related amendment to the Articles of Incorporation adequately address matters related to the location of meetings of the board of directors of the Corporation and that no reference is necessary in the regulation.

The aforementioned amendments were made pursuant to section 4.28A of the Act, § 611.1140(a) of the regulations of the FCA (51 FR 8666) and Article X of the Articles of Incorporation of the Corporation, and were effective immediately upon their execution by the Acting Chairman of the Farm Credit Administration Board. The texts of the

articles of incorporation as amended are set forth below.

Kenneth J. Auberger,

Acting Chairman.

Articles of Incorporaton of The Farm Credit System Capital Corporation

* * * * *

Article III—Duration And Office

* * * * *

Section 2. Principal Office. The principal business offices of the Corporation shall be located in the greater metropolitan area of Kansas City, from which offices the business and operations of the Corporation shall be conducted. All meetings of the board of directors of the Corporation shall be held in the greater metropolitan area of Kansas City, except that the board may hold any meeting outside such area upon a resolution adopted by at least 80 percent of the members of the board.

* * * * *

Article VII.—Board of Directors

* * * * *

Section 4. Term. The initial term of the first appointed director and the director elected to the position in section 2(c) above shall end December 31, 1986. The initial terms for every other elected or appointed director shall end December 31, 1987. Thereafter, each elected or appointed director shall serve for a term of two calendar years. All directors shall serve until his or her successor becomes appointed or elected and qualified, unless the office becomes vacant or the director is removed, dies, resigns, or is otherwise unable to serve in accordance with the Bylaws or the FCA regulations. Any appointed or elected director may serve any number of terms, unless removed.

[FR Doc. 86-9910 Filed 5-1-86; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Approved by Office of Management and Budget

April 25, 1986.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3507). For further information contact Boris Benz, (202) 632-7513.

OMB No.: 3060-0040
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority
Form No.: FCC 404/404-A

A revised application form FCC 404/404-A has been approved for use through 3/31/89. The June 1983 and October 1984 editions with the previous expiration date of 3/31/86 will remain in use until revised forms are available.

OMB No.: 3060-0135
Title: Supplemental Return Notice for the General Mobile Radio Service
Form No.: FCC 6024-B

The approval on FCC 6024-B has been extended through 3/31/89. The May 1983 edition with the previous expiration date of 4/30/86 will remain in use until updated forms are available.

OMB No.: 3060-0136
Title: Temporary Permit to Operate a General Mobile Radio Service System
Form No.: FCC 574-T

The approval on FCC 574-T has been extended through 3/31/89. The May 1983 and October 1985 editions with the previous expiration date of 4/30/86 will remain in use until updated forms are available.

OMB No.: 3060-0139
Title: Request for Approval of Proposed Amateur Radio Antenna and Notification of Action
Form No.: FCC 854

A revised form FCC 854 has been approved for use through 3/31/89. The June 1983 edition with a previous expiration date of 4/30/86 will remain in use until revised forms are available.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 86-9858 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

April 25, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3507).

Copies of these submissions are available from the Commission by calling Doris Benz, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0017
Title: Application for a Low Power TV, TV Translator or FM Translator Station Licensee
Form No.: FCC 347
Action: Extension
Estimated Annual Burden: 1,120 Responses; 2,520 Hours.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301
Action: Revision
Estimated Annual Burden: 2,881 Responses; 359,492 Hours.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 86-9857 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

Federal Advisory Committee for the 1987 ITU Administrative Radio Conference for the Mobile Services; Meeting

April 28, 1986.

The eighth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Friday, 30 May, 1986, at 9:30 A.M. In the Commission Meeting Room 856, 1919 M Street, NW., Washington, DC.

The meeting agenda is:

1. Approval of meeting agenda.
2. Approval of the summary record of the May 9, 1986, meeting.
3. Report on administrative matters from designated federal employee.
4. Note Report of the Federal Advisory committee being filed in response to Third Notice of Inquiry.
5. Discussion on handling of Reply Comments.
6. Discussion of future work of the Federal Advisory Committee.
7. Other business.
8. Selection of next meeting date.

Anyone desiring further information should contact Robert McIntyre, FCC/PRB at (202) 632-7175. These meetings are open to the public.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-9860 Filed 5-1-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010485–015

Title: United States Atlantic & Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
Med-America Express Service
Lykes Bros. Steamship Corp.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to permit any member, until May 31, 1986, to withdraw from the Conference without penalty on one day's notice. The parties have requested a shortened review period.

Agreement No.: 217–010703–003.

Title: Hyundai Merchant Marine Co., Ltd./Hanjin Container Lines, Ltd., Space Charter and Sailing Agreement.

Parties:

Hyundai Merchant Marine Co., Ltd.
Hanjin Container Lines, Ltd.

Synopsis: The proposed amendment would modify the agreement to substitute the MV Pacific Progress for the vessel MV Pacific Express operating in the Korea/Taiwan/Hong Kong route which slightly increases vessel capacity from 2499 TEU's to 2768 TEU's. The parties have requested a shortened review period.

Agreement No.: 224–010918.

Title: Port of Fernandina Terminal Agreement

Parties:

Nassau Shipping Company, Inc. (Operator)
Ocean Highway and Port Authority of Nassau County (Port Authority)

Synopsis: The proposed agreement would permit the Operator to (1) provide services such as stevedoring, warehousing, storage and reclaim; and (2) handle cargo of all types in and out of the Port of Fernandina and include the collection of all fees. The term of the agreement is fifteen (15) years. The parties have requested a shortened review period.

Agreement No.: 024–010919.

Title: Global Terminal/Hale Container Line Terminal Agreement.

Parties:

Global Terminal & Container Services, Inc. (Global)
Hale Container Line (Hale)

Synopsis: The proposed agreement would permit the Global to provide terminal and stevedoring services at its marine terminal facility located in the Port of New York for containers to be loaded onto, or discharged from barges owned, operated, chartered or controlled by Hale in its container barge feeder service.

Agreement No.: 023–010920.

Title: Port of Portland Terminal Agreement.

Parties:

The Port of Portland (Port)
Matson Navigation Company, Inc. (Matson)

Synopsis: The proposed agreement would permit the Port to utilize a Lash/Cargo Stow Computer Program for which Matson is authorized to grant sublicenses in the performance of terminal and stevedoring services for Matson vessels calling at the Port.

By Order of the Federal Maritime Commission.

Dated: April 29, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–9898 Filed 5–1–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Central Financial Corp. et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23 (a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulations Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1986.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Central Financial Corporation,* Randolph, Vermont; to engage directly in management consulting services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in Vermont.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illinois Neighborhood Development Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary TNI Development Corporation, Chicago, Illinois, in organization, development and investment in housing development projects. These activities will be conducted in Illinois. Comments on this application must be received not later than May 20, 1986.

2. *Summcorp,* Fort Wayne, Indiana; to engage *de novo* through its subsidiary Summcorp Financial Services, Inc., Fort Wayne, Indiana, in securities brokerage activities.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ameritex Bancshares Corporation,* Dallas, Texas; to engage *de novo* through its subsidiary Ameritex Service Corporation, Dallas, Texas, in the activity of providing to others financially related data processing, data transmission services, facilities and data bases or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9836 Filed 5-1-86; 8:45 am]

BILLING CODE 6210-01-M

Graham Shares of Waverly, 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 May 23, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Graham Shares of Waverly, Inc.,* Waverly, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Waverly, Waverly, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kosman, Inc.,* Scottsbluff, Nebraska; to become a bank holding company by acquiring 10 percent of the voting shares of Western National Bank, Scottsbluff, Nebraska, and 32.1 percent of the voting shares of Scottsbluff National Corporation, Scottsbluff, Nebraska, and thereby indirectly acquire Scottsbluff National Bank and Trust Company, Scottsbluff, Nebraska.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *San Diego Bancshares, Inc.,* San Diego, Texas; to become a bank holding company by acquiring 99.05 percent of the voting shares of First State Bank of San Diego, San Diego, Texas.

Board of Governors of the Federal Reserve System, April 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9837 Filed 5-1-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 25, 1986.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of packages)

Subject: Response to Notice of Revised Determination—Extension SSA-765—(0960-0347)
Respondents: Individuals or households
Subject: Foreign Validation Study Report, Extension—SSA—1305—(0960-0380)
Respondents: Individuals or households
Subject: RSI/DI Quality Review Case Analysis, Annual Earnings Test—Extension—SSA-2930, 2931, 2932 and 4659—(0960-0189)
Respondents: Individuals or households
Subject: Request for Address Information from Motor Vehicle Records, SSA-L 711; Request for Address Information from Employment Commission Records, SSA-L 712:—(0960-0341), Extension
Respondents: State or local governments
Subject: Statement Regarding Student's School Attendance, SSA-2434—(0960-0113), Extension
Respondents: Individuals or households
Subject: Cessation or Continuance of Disability or Blindness Determination and Transmittal, Existing Collection—SSA-833
Respondents: Individuals or households
Subject: Disability Hearings Officer's Decision—Existing Collection
Respondents: Individuals or households
Subject: Reponse to Notice of Revised Determination—Extension—SSA-765—(0960-0347)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh
Subject: State Estimate Form—Extension—ORR-1 (0960-0298)
Respondents: State or local governments
Subject: Estimate of Monthly Obligations—Extension—(0960-0318)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Public Health Service

(Call Reports Clearance Office on 202-245-2100 for copies of packages)

Health Resources Services Administration

Subject: General Notice—Federally Assisted Health Professions and Nurse Teaching Facilities; Federal Right of Recovery and Calculation of Recovery Amount and Interest Charges—New
Respondents: State or local governments; Businesses or other for-profit institutions; Small businesses or organizations

Assistant Secretary for Health

Subject: Laboratory-Based Research on the Cognitive Aspects of Survey Methodology: Selected Reporting Problems in the National Health Interview Survey—Revision—(0937-0140)
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of packages)

Subject: Hospice Core Service: Nursing Hospice Manual—New—HCFA-R-69
Respondents: Hospices
Subject: Request to Establish Eligibility in the Medicare and/or Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services—Extension—HCFA-1856 & HCFA-1893—(0938-0065)
Respondents: State or local governments; Small businesses or organizations
Subject: Home Health Agency—Request for Certification in the Medicare/Medicaid Program and the Home Health Agency Survey Report Form—HCFA-1515 & HCFA—1572—Extension—(0938-0355)
Respondents: State or local governments
Subject: Physical Therapist in Independent Practice for

Certification—Extension—HCFA–262—(0938–0258)
Respondents: State or local governments
Subject: Request for Certification as a Rural Health Clinic and Rural Health Clinic Survey Report Form—Extension—HCFA–29 and HCFA–30—(0938–0074)
Respondents: State or local governments. Small businesses or organizations
Subject: Contractors Information Collections—Federal Re-review Process (Medicaid Eligibility Quality Control), HCFA–9010—Extension—(0938–0210)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. ATTN: (name of OMB Desk Officer).

Dated: April 28, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–9881 Filed 5–1–86; 8:45 am]

BILLING CODE 4150–04–M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 50 FR 50847, December 12, 1985), is amended to reflect a reorganization within the National Center for Health Statistics (NCHS), Office of the Assistant Secretary for Health. Specifically, budget activities will be transferred from the Office of Management, Office of Resource Management, Division of Financial Management, OASH Financial Management Branch, to NCHS, Office of Management.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA–20 Functions, under the heading for *the National Center for Health Statistics (HAS),* revise the functional statement for the *Office of Management (HAS13)* by deleting "financial" from item (5); ",and" before item (10); and, adding a new item (11) "and, (11) serves as principal advisor in areas of financial management activities and manages a system of budgetary, expenditure and employment controls."

Effective Date: April 28, 1986.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 86–9882 Filed 5–1–86; 8:45 am]

BILLING CODE 4160–17–M

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Chapter HD (Public Health Service Regional Offices, HD1–HDX), (44 FR 21711, April 11, 1979, as amended most recently at 49 FR 35251, September 6, 1984), is amended to reflect a reorganization in Region IV, Atlanta, Georgia. The Division of Health Services (Region IV) is abolished and its functions are realigned into two divisions: Division of Community Health Services and Division of Family Health and Professional Services. This alignment will provide for a structure that will eliminate duplication of effort by more accurately grouping distinguishable responsibilities and functions to meet the needs of current health policies and programs. There are no organization changes in the remaining nine regional offices.

Public Health Service Regional Offices

Under Chapter HD, Public Health Service Regional Offices, Section HD–00 Mission, title and statement delete Section HD–10 Organization and substitute the following:

Section HD–10 Organization. The Public Health Service Regional Offices (HD1–HDX) consist of:

Office of Regional Health Administrator (HD1–HDX)
Office of Engineering Services (HD*E) [1]
Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*IV) [2]
Division of Community Health Services (HD*C) [3]
Division of Family Health and Professional Services (HD*P) [3]
Division of Health Resources Development (HD*W)
Division of Federal Employee Occupational Health (HD*H)

Under Section HD–20 Functions, Public Health Service (PHS) Regional Offices (HD1–HDX) following the title for the *Office of Engineering Services (HD*E)* change the footnote to 1 stating "Regions II, VI and X."

*After the title for the Division of Health Services Delivery (HD*V),* add a footnote 2 stating "Division in all regions except Region IV."

*After the statement for the Division of Health Services Delivery (HD*V)* add the following title, statements, and footnotes for Region IV only:

Division of Community Health Services (HD4C) [3]

The Division: (1) Directs and coordinates program and activities designed to promote and provide quality health services within the region; (2) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (3) promotes and directs activities designed to increase health care capacity and to increase access to quality health services for the medically underserved; (4) services as regional focal point for promoting and directing efforts to integrate services delivery projects in a more comprehensive manner to maximize services available in health scarcity areas; (5) verified accuracy and analyzes programmatic data with respect to health service programs; (6) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (7) provides for development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignments of division resources required to attain these objectives; (8) coordinates with other regional office staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS

[1] Offices located in Regions II, VI, and X.
[2] Division in all regions except Region IV.
[3] Division in Region IV.

Regional Office on assigned program areas and as regional program liaison with PHS headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; and (11) serves as a focal point for information on health service programs and related efforts within the region including voluntary, professional and other private sector activities.

Division of Family Health and Professional Services (HD4P) [3]

The Division: (1) Directs and coordinates program and activities designed to promote and provide quality family health services within the region; (2) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including interpretation of national policies and guidelines to contractors and applicants for Federal assistance; (3) serves as the regional focal point for promoting and directing efforts to improve the quality of health care provided in PHS supported programs; (4) develops and maintains systems of quality assurance for PHS funded programs; (5) verifies accuracy and analyzes programmatic data with repect to family health programs; (6) reviews and recommends action on grant applications and contract proposals, and provides continuous programmatic monitoring of division grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (7) provides for development, implementation, and monitoring of the annual work plan related to assigned program areas, including setting objectives responsive to national and regional priorities and assignments of division resources required to attain these objectives; (8) coordinates with other regional staff to develop and consolidate objectives which cross program and division lines; (9) serves as a source of expertise in the PHS Regional Office on assigned program areas and as regional program liaison with PHS Headquarters on technical programmatic areas; (10) establishes effective communication and working relationships with health related organizations of States and other jurisdictions; (11) develops and manages professional staff development program for Regional Office and PHS grantees; and (12) serves as focal point for information on family health programs and related efforts within the region including voluntary, professional and other private sector activities.

Dated: April 22, 1986.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 86-9883 Filed 5-1-86; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are Health Fraud and Health Claims for Food.

DATE: Friday, May 16, 1986, 10 a.m. to 12 m.

ADDRESS: University of Minnesota, Rochester, Friedell Bldg., Rm. CD, 1200 South Broadway, Rochester, MN 55904.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-349-3900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 28, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-9841 Filed 5-1-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-0248]

National Patent Development Corp.; Premarket Approval of the Caridex ™ Caries Removal System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by National Patent Development Corporation, New Brunswick, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the GK-101E Caries Removal Agent/System. After reviewing the recommendation of the Dental Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application. After CDRH approved the application, the application holder submitted to FDA a supplement to the application requesting FDA's approval of certain labeling revisions and distribution of the device by a subsidiary, Princeton Dental Products, Inc., New Brunswick, NJ, under the trademark name Caridex ™ Caries Removal System. After reviewing the supplemental application, CDRH notified the applicant of its approval.

DATE: Petitions for administrative review by June 2, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185.

SUPPLEMENTARY INFORMATION: On July 1, 1983, the National Patent Development Corporation, New Brunswick, NJ 08901, submitted to CDRH an application for premarket approval of the GK-101E Caries Removal Agent/System. The device is intended for use with conventional dental instruments for removal of dental caries where the applicator tip of the GK-101E Caries Removal Agent/System can directly contact the carious lesion, to reduce use of a dental drill.

On October 21, 1983, the Dental Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 6, 1984, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

On May 13, 1985, FDA filed a supplemental application submitted by the National Patent Development Corporation requesting FDA's approval to change the name of the device, to make certain labeling revisions, and to distribute the device through a subsidiary, Princeton Dental Products, Inc., 789 Jersey Ave., New Brunswick, NJ 08901. On August 28, 1985, CDRH approved the supplemental application by a letter to the applicant from the Director, Division of Obstetrics/Gynecology, Ear, Nose and Throat, and Dental Devices, Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval of the original

application is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David A. Segerson (HFZ–470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 2, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 25, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–9840 Filed 5–1–86; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

Child Abuse and Neglect Prevention Activities

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notice of the availability of Federal funds to support child abuse and neglect prevention activities.

SUMMARY: FY 1985 Federal funds ("challenge grants") are now available to those States that in the previous State or Federal fiscal year, FY 1984, had established or maintained trust funds or other funding mechanisms (including appropriations) available only for child abuse and neglect prevention activities. "States" are defined as the several States, the District of Columbia, and the Commonwealth of Puerto Rico. This Notice sets forth the application and other requirements for these grants.

No funds are proposed for this program in FY 1987. Challenge grants are intended to be a one year transition into the Administration's proposed consolidated Family Crisis and Protective Services (FCPS) program in FY 1987. The FCPS program will give States greater flexibility in addressing the related issues of family violence and child abuse.

DATES: Applications must be received by July 1, 1986. Address applications to: Challenge Grants, National Center on Child Abuse and Neglect, Attention: Mary McKeough, Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jay Olson (202) 245–2859 or Mary McKeough (202) 245–2856.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1984, Pub. L. 98–473, the continuing appropriations bill for FY 1985, was enacted. The purpose of sections 402 through 409 of that bill is, by providing Federal challenge grants, to encourage States to establish and maintain trust funds or other funding mechanisms, including appropriations, to support child abuse and neglect prevention activities. On August 15, 1985, Pub. L. 99–88, the Supplemental Appropriations Act of 1985, appropriated $5 million for FY 1985 to support these provisions and extended the availability of these funds through FY 1986.

At the time this legislation was enacted, Congress estimated that, approximately 20–25 States had set up trust funds or other funding mechanisms to support child abuse and neglect prevention activities.

Child abuse and neglect prevention activities include the activities specified in section 405:

(1) Providing statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect;

(2) Encouraging professional persons and groups to recognize and deal with problems of child abuse and neglect;

(3) Making information about the problems of child abuse and neglect available to the public and to organizations and agencies which deal with problems of child abuse and neglect; and

(4) Encouraging the development of community prevention programs, including:

(A) Community based educational programs on parenting, prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress, personal safety and sexual abuse prevention training for children, and self-care training for latchkey children; and

(B) Community-based programs relating to crisis care, aid to parents, child-abuse counseling, peer support groups for abusive parents and their children, lay health visitors, respite or crisis child care, and early identification of families where the potential for child abuse and neglect exists.

Eligibility

States as defined in section 403 are eligible to apply for a grant for these FY 1985 funds if the State had established and maintained in the previous State or Federal fiscal year (FY 1984) a trust fund or other funding mechanism (including appropriations) available only for child abuse prevention activities. We want to emphasize that, based on section 405 which refers to State activities "in the previous fiscal year," these FY 1985 funds can be made available only based on FY 1984 activities. The term "State" as defined in section 403(2) means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

Funds Available and Fiscal Requirements

Pub. L. 99–177, the Gramm-Rudman-Hollings legislation reduces the $5 million appropriated for these grants by 4.3% to $4.785 million.

Section 406(a)(1) of Pub. L. 98–473 provides that any grant to an eligible State shall be the lesser of two amounts:

(1) Twenty five percent of the total amount made available by such State for child abuse and neglect prevention activities and collected in the previous Federal fiscal year (1984) in a trust fund or any other funding mechanism. This amount can include appropriations but cannot include interest income from the principal of such a fund or funding mechanism.

or

(2) An amount equal to 50 cents times the number of children in the State according to the most current data available to the Secretary. (Section 406(a)(2) defines "children" as "individuals who have not attained the State's age of majority.")

In computing a State's allocation, we will use the Bureau of the Census population statistics contained in its publication "Current Population Reports" (Series P–25, No. 970, issued June 1985) which is the most recent satisfactory data available from the Department of Commerce.

Funds available will be divided among the eligible States on a pro-rata basis based on the statutory formula if the amount appropriated is insufficient to fund each State in full.

The Supplemental Appropriations Act specified that the funds appropriated for FY 1985 would remain avilable until September 30, 1986. States must expend these funds by September 30, 1987.

Application Requirements

The application requirements for these grants do not go beyond the requirements of the statute but do require minimum documentation in order to assure compliance. We have cited each requirement to the specific section of the law and suggest that this notice be read in conjunction with the statutes. No application forms or other materials will be needed in order to prepare an application. A State may submit its application in any format it chooses.

The Secretary will approve any application that meets the requirements of section 406(b) and will not disapprove an application unless the State has been given an opportunity to correct any deficiencies (section 406(b)(2)). Any additional materials required to satisfy the requirements of section 406(b) must be submitted within 30 days of the date the State is notified of the deficiency.

The application must be prepared by the agency specified in paragraph one below, signed by the individual authorized to act for the State in administering these funds, and must contain the following information and assurances:

1. The name and address of the trust fund advisory board responsible for administering and awarding these grants to eligible recipients within the State to carry out child abuse and neglect prevention activities, and the name and address of a contact person (section 406(b)(1)(A)).

or

In States that do not have trust funds, the name and address of the State liaison agency to the National Center on Child Abuse and Neglect (section 2 of the Child Abuse Prevention and Treatment Act) and the name and address of a contact person (section 406(b)(1)(A)).

2. A copy of the State law or legal authority:

(a) Establishing the trust fund or other funding mechanism (section 405);

(b) Documenting that the proceeds of the trust fund or other funding mechanism are used only for child abuse and neglect prevention activities (section 405);

Some States have established trust funds for both child abuse and neglect and domestic violence prevention activities. In such cases, Federal funds under this program are available based only on the funds available for the child abuse and neglect prevention activities; and

(c) Defining the State's age of majority (section 406(a)(2) and (b)(1)).

3. Documentation or certification that the trust fund (or other funding mechanism) was in operation during FY 1984 (section 405).

4. Documentation or certification of the total amount of funds collected or allotted for child abuse and neglect prevention activities in fiscal year 1984 in the trust fund or other funding mechanism, including appropriations. This total may not include interest income from the principal of such fund (section 406(a)(1)(A)).

5. An assurance that any funds received under this statutory authority will not be used to meet the non-Federal matching requirement of any other Federal law (section 406(b)(1)—(B)).

6. An assurance that the State will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 74, and that the Comptroller General of the United States and his authorized representatives will have access to these records for purposes of audit and examination (sections 406(b)(1)(C) and 408).

7. An assurance that, by December 30, 1987, the State will submit a report to the Assistant Secretary for Human Development Services on the purposes for which the funds were spent, including a description of the specific programs, projects, and activities funded (section 406(b)(1)(C) and section 409).

8. The date that the application was made available to the State E.O. 12372 process for review or a statement that the program has not been selected by the State for review.

9. A brief description of the intended use of these funds (section 406(b)(1)).

Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

A Single Point of Contact (SPOC) has been established in all States and territories except Alaska, Nebraska, Idaho, American Samoa, and Palau. Applicants from any of these areas need take no action regarding E.O. 12372. Otherwise, applicants must submit the required material to the SPOCs to obtain their comments for consideration by HDS as part of the application review and award process.

SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions regarding the process. Required material should be sent to the SPOC as early as possible. HDS will notify the cognizant SPOC of any application received which has no indication that the SPOC has had an opportunity for review. It is imperative that the applicant submit the required materials to the SPOC and indicate the date of this submittal in the application.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between advisory comments and those recommendations

which they expect HDS to accept or accommodate.

SPOCs will submit their comments directly to: Challenge Grants, National Center on Child Abuse and Neglect, Attention: Mary McKeough, Box 1182, Washington, DC 20012.

A list of the Single Points of Contact for each State and territory is included at the end of this announcement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements in this Notice have been submitted to the Office of Management and Budget for approval.

(Catalog of Federal Domestic Assistance Program Number 13.672, Child Abuse and Neglect Prevention Activities)

Dated: April 21, 1986.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

February 26, 1986

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska

None

Arizona

Department of Commerce, State of Arizona

Note.—Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Janice Dunn, Attn: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact:

Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Mr. Alexander J. Ingram, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864

Kansas

Ms. Judy Krueger, Intergovernmental Liaison, 122 A South, State Office Building, Topeka, Kansas 66612, Tel. (913) 296–3919

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Mr. Ferguson Brew, Assistant Secretary and SPOC, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3725

Maine

State Planning Office, Attn: Intergovernmental Review Process/Hal Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact:

Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Corresponsence & questions concerning this State's E.O. 12372 process should to be directed to:
John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services; Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbuis, Ohio 43215

For Information Contact:

Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Don Strain, Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Barbara J. Gontz, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note. Questions & correspondence concerning this State's review process should be directed to:

Mr. Michael T. Marfeo, Review Coordinator

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Connie Tveidt, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note.—Questions concerning this State's review process should be directed to:

Intergovernmental Relations Division, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Shawn McNamara, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

Washington

Washington Department of Community Development, Attn: Washington Intergovernmental Review process, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster, GEF #2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note. —Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Program Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

District of Columbia

Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Ms. Patricia G. Custodio, P.E., Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

AMERICAN SAMOA

None

GUAM

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910.

[FR Doc. 86–9919 Filed 5–1–86: 8:45am]

BILLING CODE 4130–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 86–8487, beginning on page 12928, in the issue of Wednesday, April 16, 1986, make the following correction.

On page 12929, first column, third complete paragraph, first line, "(HY–" should read "(HN–".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Wednesday,

May 14, 1986, starting at 9:00 a.m., in the Colorado Supreme Court Chambers, Colorado State Judicial Building, 2 East 14th Avenue, 5th Floor, Denver, 80203

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons my attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111—20th Street, NW., Washington, DC 20036–8547, (202) 634–7310.

Dated: April 28, 1986.

Victor H. Ashe,

Executive Director, President's Commission on American Outdoors.

[FR Doc. 86–9909 Filed 5–1–86; 8:45am]

BILLING CODE 4310-70-M

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Friday, May 16, 1986, starting at 10:30 a.m., in the Hitching Post Inn, Coach Rooms A&B, 1700 W. Lincoln Way, Cheyenne, WY 82007.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing however interested parties may request time is testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact 12 Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.0, Box 18547, 1111—20th Street, NW., Washington, DC 20036–8547, (202) 634–7310

Dated: April 28, 1986.

Victor H. Ashe,

Executive Director, President's Commission on American Outdoors.

[FR Doc. 86–9908 Filed 5–1–86; 8:45am]

BILLING CODE 4310-70-M

Bureau of Land Management

[F-14930-A]

Alaska Native Claims Selection; NANA Regional Corp., Inc.

In accordance with Departmental regulation 43 CFR 2650.79(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43, U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, inc., for 0.39 acres. The lands involved are in the vicinity of Selawik, Alaska, located within U.S. Survey No. 4492, Tract A, block 8, Lot 31.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 2, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–9820 Filed 5–1–86; 8:45 am]

BILLING CODE 4310-JA-M

[W-81777]

Wyoming; Proposed Spanish Point Cave Withdrawal; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to 43 CFR 2310.3–1(6)(2)(v) a public meeting will be held on Tuesday, June 10, 1986 at 7:00 p.m. at the Worland District Office, 101 South 23rd Street, Worland, Wyoming, to accept public comment on the proposed Spanish Point Cave Withdrawal. The proposed withdrawal affects 6,449 acres of federal mineral estate beneath private surface, and lands administered by the Bureau of Land Management and the Forest Service. These lands are located in Big Horn County, north of Hyattville, Wyoming. The withdrawal will segregate these lands from the operation of the nondiscretionary land laws, including mining claim location under the General Mining Law of 1872, as amended, in order to protect important water recharge and cave areas associated with the Tres Charros and Great Expectations Cave Systems.

ADDRESSES: Written comments may be mailed prior to June 10, 1986 to: Wyoming State Director (931), Bureau of Land Management P.O. Box 1828, Cheyenne, Wyoming 82003. Written or oral comments may be submitted at the public meeting on June 10, 1986, at 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Bureau of Land Management, Wyoming State Office, Branch of Land Resources (931), P.O. Box 1828, Cheyenne, Wyoming 82003, (307) 772–2089.

Dated: April 23, 1986.

Chester E. Conard,

District Manager.

[FR Doc. 86–9842 Filed 5–1–86; 8:45 am]

BILLING CODE 4310-22-M

Filing of Plat of Survey

AGENCY: Bureau of Land Management

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah

T. 11 N., R. 14 W.

This plat represents the dependent resurvey of portions of T. 11 N., R. 14 W., Salt Lake Meridian, Utah, for Group 625 accepted January 16, 1986.

Salt Lake Meridian, Utah

T. 21 S., R. 20 E.

This supplemental plat shows a portion of T. 21 S., R. 20 E., Salt Lake Meridian, Utah, was accepted January 10, 1986.

Salt Lake Meridian, Utah

T. 36 S., R. 22 E.

This plat represents the dependent resurvey and survey of portions of T. 36 S., R. 22 E., Salt Lake Meridian, Utah, for Group 644 accepted January 17, 1986.

Salt Lake Meridian, Utah

T. 33 S., R. 4½ W.

This plat represents the original survey of a portion of T. 33 S., R. 4½ w., Salt Lake Meridian, Utah, for Group 652 accepted February 13, 1986.

Salt Lake Meridian, Utah

T. 39 S., R. 15 W.

This plat represents the dependent resurvey of a portion of T. 39 S., R. 15 W., Salt Lake Meridian, Utah, for Group 674 accepted february 13, 1986.

Salt Lake Meridian, Utah

This plat represents the dependent resurvey and survey of a portion of T. 19 S., R. 7 E., SAlt Lake Meridian, Utah, for Group 619 accepted March 10, 1986.

Salt Lake Meridian, Utah

T. 17 S., R. 8 E.

This plat represents the dependent resurvey and survey of a portion of T. 17 S., R. 8 E., Salt Lake Meridian, Utah, for Group 621 accepted March 24, 1986.

Salt Lake Meridian, Utah

T. 1 N., R. 25 E.

This plat represents the corrective resurvey of a portion of T. 1 N., R. 25 E., Salt Lake Meridian, Utah, for Group 456 accepted March 25, 1986.

Salt Lake Meridian, Utah

T. 13 S., R. 5 E.

This plat represents the dependent resurvey and survey of a portion of T. 13 S., R. 5 E., Salt Lake Meridian, Utah, for Group 639 accepted March 28, 1986

Glen B. Hatch,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-9843 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-DQ-M

[Nev-054560]

Proposed Continuation of Withdrawal; Nevada

Correction

In FR Doc. 86-9224 beginning on page 15552 in the issue of Thursday, April 24, 1986, make the following corrections:

On page 15553, in the first column, in the twenty-seventh line of the Mount Diablo Meridian, Nevada, land description, delete the second "SE¼NE¼," and in the thirty-third line, "Sec. 32 N" should read "Sec. 32".

BILLING CODE 1505-01-M

[OR-2945]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that a land withdrawal for campgrounds and administrative site continue for an additional 20 years. The lands would remain closed to mining but have been and would remain open to surface entry and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Forest Service, U.S. Department of Agriculture, proposes that the existing land withdrawal made by Pubic Land Order No. 4557 of November 19, 1968, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 20 miles southwest of La Grande and aggregate 296.57 acres within T. 5 S., Rgs. 35 and 36 E., and T. 6 S., R. 36 E., W.M., Union County, Oregon.

The purpose of the withdrawal is to protect the Woodley and River Campgrounds and the Grande Ronde Guard Station Administrative site within the Wallowa-Whitman National Forest. The withdrawal segregates the lands from operation of the mining laws, but not from operation of the public land laws or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-9887 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-705711

Applicant: Ray M. Morgan, Lake Charles, LA

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)*. culled from the captive herd of Mr. P.F. Rademeyer of the Republic of South Africa, for the purpose of enhancement of propagation.

PRT-705101

Applicant: Fred Wiedenfeld, San Antonio, TX

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)*. culled from the captive herd of Mr. V. Pringle in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-679823

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 5, Newton Corner, MA

The applicant requests an amendment to their current permit to take additional species within their region for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing, or other Service work for those species.

PRT-705204

Applicant: Buffalo Zoo, Buffalo, NY

The applicant requests a permit to import one female lowland gorilla *(Gorilla gorilla)* from the Granby Zoo, Quebec, Canada. This animal was caught in the wild in Cameroon, Africa in 1983.

PRT-706144

Applicant: Dr. Don Melnick, Columbia Univ., New York, NY

The applicant requests a permit to import 150 to 200 blood samples of black rhinos *(Diceros bicornis)* and Northern white rhinos *(Ceratotherium simum cottoni)* from Kenya Zimbabwe, Africa, for scientific research.

PRT-704949

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import blood and/or tissue from wild-caught, endangered felids for purposes of determining disease prevalence and exposure to infectious organisms to enhance propagation of the species.

PRT-705626

Applicant: Otter Conservation & Research Center, Inc., Ellabell, GA

The applicant requests a permit to import 2 female long-tailed otters *(Lutra longicaudis)* taken from the wild in Panama for enhancement of propagation of the species.

PRT-705623

Applicant: Cedar Grove Farm, St. Paul, MN

The applicant requests a permit to import one captive-bred snow leopard *(Panthera unica)* from West Germany for the purpose of enhancement of propagation and survival of the species.

PRT-706233

Applicant: Dr. Patrick T. Redig, University of Minnesota, St. Paul, MN

The applicant requests a permit to import up to 50 live captive born peregrine falcons *(Falco peregrines anatum)* per year through 1989 for the purpose of enhancement of survival through reintroduction. Additionally, the applicant requests permission to recapture 3 released birds 2–4 weeks after hacking for the purpose of providing future broodstock for enhancement of propagation. Along with this the applicant wishes to import carcases of 4 adults, 6 chicks and 5 addled eggs to be used to ephance survival through conservation education.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 28,1986.

Larry LaRochelle,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 86-9932 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Appeals Decisions: Assertion of Privilege Concerning Proprietary Data; Availability

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

Pursuant to 30 CFR Part 290, the Director, Minerals Management Service (MMS), issues decisions in appeals from final decisions or orders by other MMS personnel under R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; the Mineral Lands Leasing Act, as amended, 30 U.S.C. 181 *et seq.;* the Act of February 7, 1927, 30 U.S.C. 285; the Mineral Leasing Act for Acquired Lands, as amended 30 U.S.C. 351 *et seq.;* the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1331 *et seq.;* the Geothermal Steam Act of 1970, 30 U.S.C. 1001 *et seq.;* the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.;* section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order No. 3087, as amended.

Notice is hereby given that copies of the Director's decisions are available for public inspection during regular business hours at the Division of Appeals, Office of Program Review, MMS, 12203 Sunrise Valley Drive, Reston, Va. 22091. Copies of the decisions may be obtained in accordance with the procedures in 43 CFR Part 2. Proprietary data contained in decisions will be withheld as appropriate.

The Division of Appeals also maintains an index of the Director's decisions which is available to the public in the same manner as the decisions themselves.

Consideration is being given to the publication of the decisions by a private nonprofit entity on a subscription basis. Affected persons are hereby requested to advise the Division of Appeals of any claims of privilege concerning particular proprietary data contained in specific decisions in which they may have been involved. Such claims (together with the statutory basis therefor) must be filed with the Division of Appeals within 60 days after publication of this Notice in the **Federal Register.** In the absence of such filing, any privilege against public disclosure of proprietary data contained in such decisions may be considered to have been waived.

All assertions of privilege filed with the Division of Appeals will be evaluated in accordance with applicable legal principles.

Because of its great volume, publication of a historic index of decisions is impracticable. However, as noted above, such an index is available for inspection and pursuant to 43 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: David Schuenke, Acting Chief, Division of Appeals, Office of Program Review, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia 22091 (703-648-7729).

Donald T. Sant,

Assistant Director for Program Review.

April 24, 1986.

[FR Doc. 86-9886 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Missouri National Recreational River Advisory Group; Notice of Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Missouri National Recreational River Advisory Group will be held May 15, 1986, beginning at 10 a.m. at the Lewis and Clark Lake Visitors Center at Gavins Point Dam near Yankton, South Dakota.

The group was established on October 26, 1981, pursuant to Pub. L. 95-625 (92 Stat. 3529) as amended by Pub. L. 96-344 (94 Stat. 1137), 16 U.S.C. 1274, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Missouri National Recreational River.

Matter to be discussed at the meeting will include revised cost-sharing formula for operation and maintenance of projects in the recreational river, Farm Debt Restructure and Easement Set-Aside Program of the Farmers Home Administration, and development of a biological assessment pursuant to section 7 of the Rare and Endangered Species Act.

The meeting will be open to the public. Interested persons may submit written statements or request information concerning this meeting from David H. Shonk, Associate Regional Director, Cooperative Activities, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-4855 (FTS 864-4855). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 4 weeks after the meeting.

Dated: April 22, 1986.

Warren H. Hill,

Acting Regional Director, Midwest Region.

[FR Doc. 86-9961 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare an Environmental Impact Statement on the Proposed Area B Expansion of the Big Sky Mine, Rosebud County, Montana (Federal Coal Lease No. M-15965)

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

ACTION: Notice of intent to prepare an environmental impact statement and announcement of a period during which written comments regarding the scope of the environmental-impact-statement analysis will be received.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Montana Department of State Lands (DSL) intend to jointly prepare an environmental impact statement (EIS) on the permit application Peabody Coal Company (PCC) has submitted to OSMRE and the State of Montana for its proposal to expand the Big Sky mine into Area B. The EIS will evaluate the alternative actions of approval, disapproval, and no action that are available to the Department of the Interior and the State of Montana regarding PCC's proposal. It will also evaluate other alternative actions that OSMRE and Montana DSL may develop on the basis of comments they may receive during the scoping process. The EIS will assist the Department of the Interior and the State of Montana in making a decision on PCC's application to surface mine coal southwest of Colstrip, Montana. OSMRE and Montana DSL request that other agencies and the public submit written comments or statements to them concerning the scope of the EIS analysis.

DATES: Written comments or statements concerning the scope of the EIS will be accepted through May 30, 1986, as the locations given under **"ADDRESSES."**

ADDRESSES: Written comments or statements concerning the scope of the EIS should be mailed or hand-delivered to either Allen D. Klein, Administrator, Attn: Acting Chief, Environmental Analysis Branch, OSMRE, Western Technical Center, Second Floor, Brooks Towers, 1020–15th Street, Denver, Colorado 80202, or Kit Walther, Chief, Environmental Analysis Bureau, Montana DSL, 1539 11th Street, Capitol Station, Helena, Montana 59620.

Copies of PCC's permit application, mining plan, and reclamation plan are available for review at the OSMRE and Montana DSL offices listed above and at the OSMRE Casper Field Office, 100 East "B" Street, Room 2128, Federal Building, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Floyd McMullen, Environmental Analysis Branch (telephone: 303–844–2451 (commercial) or 564–2451 (FTS)), at the Denver, Colorado, location given under **"ADDRESSES."**

SUPPLEMENTARY INFORMATION: PCC's Big Sky mine is an existing surface coal mine located approximately 120 miles east of Billings, Montana, and 5 miles southsouthwest of Colstrip, Montana. PCC intends the mine to eventually cover 8,096 acres of land, of which 2,574 acres have already been or are in the process of being permitted by OSMRE and Montana DSL within Area A of the mine.

PCC is currently seeking approval to mine 83 million tons to coal at the Area B expansion of the mine over a 22-year period at an average rate of approximately 4 million tons per year. The proposed expansion would add 5,522 acres to the Big Sky mine permit area in secs. 23, 24, and 25, T. 1 N., R. 40 E., and secs. 19, 21, 22, and 27 through 33, T. 1 N., R. 41 E., Montana Principal Meridian; 2,270 of these 5,522 acres would be disturbed by mining activities.

OSMRE and Montana DSL are preparing the EIS both to evaluate alternative actions available to the Department of the Interior and the State of Montana on PCC's permit application and to identify and analyze the environmental impacts that would be associated with implementing each such action. The major alternative actions OSMRE and Montana DSL have thus far identified for consideration are (1) approval of the permit application with such conditions, if any, as would assure its compliance with requirements of the Surface Mining Control and Reclamation Act of 1977, the Montana Strip and Underground Mine Reclamation Act, 82–201, *et seq.*, the 1981 Montana Permanent Strip and Underground Mine Reclamation Rules, the Montana Cooperative Agreement with the Department of the Interior (30 CFR 926), and other Federal and State laws; (2) disapproval of the permit application; and (3) no action. OSMRE and Montana DSL may develop other alternative actions on the basis of comments they may receive regarding the scope of the EIS analysis.

OSMRE and Montana DSL are requesting that any interested party submit written comments or statements regarding the scope of the analysis. Comments/statements received by OSMRE and Montana DSL will assist those agencies in gathering information and in defining the scope of issues and concerns to be evaluated in the EIS.

Dated: April 28, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 86-9870 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-231]

Certain Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids," Related Literature and Packaging Therefor; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Osco Drug, Inc. (Osco) and Sav-On-Drugs, Inc. (Sav-On).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties in April 25, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the

Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: April 28, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-9854 Filed 5-1-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Conair Corporation, 1 Cummings Point Road, Stamford, Connecticut 06904.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Zotos International, Inc.—N.Y. Corporation.

B. 1. Parent corporation and address of principal office: Enamel Products & Plating Company, 3500 Walnut Street, McKeesport, PA 15132.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and states of incorporation:

Name and State

(i) E.P. & P. Trucking Co., PA;

(ii) Solar Hardware Division, MS;

(iii) Southern-Gemini Division, MS; and

(iv) Anderson Metal Products, MS.

C. 1. Parent corporation: FAIRWAY FOODS, Northfield, NM & Fargo, ND. (A Minnesota Corporation).

(2) Wholly-owned subsidiaries:

(i) FAIRCO—ASSOCIATED GROCERS, INC., Ankeny, IA (an Iowa Corporation).

(ii) FAIRCO, INC. (Carpenter Cook Co.), Menominee, MI (a Michigan Corporation).

D. 1. Parent corporation: Graves Refrigeration, Inc., 4781 Lewis Road, Stone Mountain, George 30083.

2. Wholly-owned subsidiaries which will participate in the operations:

(i) Knoxville Refrigeration Supply Company, Inc., Post Office Box 3188, 621 Lamar Street, Knoxville, Tennessee 37927 (incorporated in the state of Delaware).

(ii) J & P Supply Company, 1508 East 26th Street, Chattanooga, Tennessee 37407 (incorporated in the state of Tennessee).

E. 1. Parent corporation: J.P. Stevens & Co., Inc., 1185 Avenue of the Americas, New York, New York 10036.

2. Wholly-owned Subsidiaries:

(i) Stevens Aviation, Inc. (DE), Greenville-Spartanburg Jetport, Greer, SC 29651

(ii) Steven Stores, Inc. (DE), 2712 Laurens Road, Greenville, SC 29607

(iii) Stevcoknit, Inc. (DE), 1450 Broadway, New York, NY 10018

Stevcoknit Fabrics, Co., Inc. (NY), 1450 Broadway, New York, NY 10018

Carter Plant (DE), 601 Wilmington Road, Wallace, NC 28466

Fayetteville Plant (NC), 902 Southern Avenue, Fayetteville, NC 28306

Tuxedo Plant (DE), Highway 25, Tuxedo, NC 28784

Ragan Plant (DE), Bessemer City Road, Gastonia, NC 28053

SKT Research & Development and Workshop Corporation (CT), 1450 Broadway, New York, NY 10018

(iv) Gloria Vanderbilt Creations, Inc. (DE), 1185 Ave. of the Americas, New York, NY 10036

(v) Ralph Lauren Home Furnishings, Inc. (DE), 1185 Ave. of the Americas, New York, NY 10036

(vi) Stevens Direct Marketing, Inc. (DE), Commerical Drive, Greenville, SC 29607

(vii) Stevens Freight Service, Inc., U.S. Hwy 29 North, Greensboro, NC 27405

(viii) P. Stevens & Co. (Canada), Ltd., 474 Attwell Drive, Rexdale, Ontario M9W 1M4

(ix) J.P. Stevens & Co. Limited (Great Britain), 26 Dover Street, Longdon, England WI

(x) J.P. Stevens (Deutschland) G.m.b.H. Wanhemerstrase 39 4000 Dusseldorf, W. Germany 30

(xi) J.P. Stevens International Sales, Inc. (DE), 1185 Ave. of the Americas, New York, NY 10036

(xii) J.P. Stevens (Europe), Ltd., 1185 Ave. of the Americas, New York, NY 10036

(xiii) Courier Graphics, Inc. (KY), 4325 Old Shepherdsville Rd., Louisville, KY 40218

Insurance Field Company, 4325 Old Shepherdsville Rd., Louisville, KY 40218

F. 1. Parent corporation: Super Valu Stores, Inc., P.O. Box 990, Minneapolis Minnesota 55440.

2 Subsidiaries and State of incorporation:

(i) J.M. Jones Company, Champaign, IL—Delaware.

(ii) Lewis Grocer Company, Indianola, MS—Mississippi.

(iii) Preferred Products, Inc., Chaska, NN—Minnesota.

(iv) Shopko Stores, Inc., Green Bay, WI—Minnesota.

(v) SVS Trucking, Inc., Eden Prairie, MN—Minnesota.

(vi) Western Grocers Inc., Albuquerque, NM—Colorado.

(vii) Western Grocers Inc., Denver, CO—Colorado.

(viii) West Coast Grocery Company, Salem, OR—Washington.

(ix) West Coast Grocery Company, Spokane, WA—Washington.

(x) West Coast Grocery Company, Tacoma, WA—Washington.

3. Divisions of Super Valu Stores, Inc.:

(i) Anniston Division, Anniston, AL.

(ii) Atlanta Division , Atlanta, GA.

(iii) Bismarck Division, Bismarck, ND.

(iv) Charley Brothers Division, Greensburg, PA.

(v) Cub Food Division, Stillwater, MN.

(vi) Des Moines Division, Des Moines, IA.

(vii) Fargo Division, Fargo, ND.

(viii) Food Marketing Division, Fort Wayne, IN.

(ix) Green Bay Division, Green Bay, WI.

(x) Minneapolis Division, Hopkins, MN.

(xi) Ohio Valley Distribution, Xenia, OH.

(xii) Ryan's Division, Billings, MT.

(xiii) Ryan's Division, Great Falls, MT.

G. 1. Parent Corporation: VF Corporation, 1047 North Park Road, Wyomissing, PA 19610.

2. Wholly-owned subsidiaries which will participate in the operations:

(i) MODERN GLOBE, INC., State of Incorporation—Deleware;

(ii) WILLIS & GEIGER, INC., State of Incorporation—Deleware;

(III) VF FACTORY OUTLET, INC., State of Incorporation—Deleware;

(IV) THE LEE APPAREL COMPANY, INC., State of Incorporation—Pennsylvania;

(v) VANITY FAIR MILLS, INC., State of Incorporation—Pennsylvania;
(vi) KAY WINDSOR, INC., State of Incorporation—Pennsylvania;
(vii) TROUTMAN INDUSTRIES, INC., State of Incorporation—North Carolina; and
(viii) BASSETT-WALKER, INC., State of Incorporation—Virginia.

James H. Bayne,

Secretary.

[FR Doc. 86-9922 Filed 5-1-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Pollution Control; Consent Decree: PPG Industries, Inc.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on April 9, 1986 a proposed consent decreee in *United States* v. *PPG Industries, Inc.*, Civil Action No. CV86-0768 was lodged with the United States District Court for the Western District of Louisiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the Clean Water Act, 33 U.S.C. 1251-1376, by PPG Industries at its Lake Charles plant due to poor operation practices during routine transfer operations. The complaint sought injunctive relief to require defendant to improve its operation practices and civil penalties for past violations. The consent decree provides that PPG Industries will improve its operation practices and comply with its National Pollutant Discharge Elimination System permit under the Clean Water Act. PPG Industries is also required to pay a civil penalty of $35,700 in settlement of the government's civil penalty claims.

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. *PPG Industries, Inc.*, D.J. Ref. 90-5-1-1-2449.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, Room 305, Federal Bldg. & U.S. Courthouse, 705 Jefferson St., Lafayette, Louisiana 70501 and at the Region Six Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-9885 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Modification of Final Decree

Notice if hereby given that American Pharmaceutical Association has filed with the United States District Court for the Western District of Michigan a motion to modify the final decree in *United States* v. *American Pharmaceutical Association and Michigan State Pharmaceutical Association*, Civil No. G75-558 CA5; and Michigan State Pharmaceutical Association has filed an affidavit of compliance with the decree; and the Department of Justic ("Department"), in a stipulation also filed with the Court, has consented to modification of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days aftter the publication of this notice. The complaint in this case (filed on November 11, 1975) alleged that the defendants had engaged in a combination and conspiracy to eliminate competition among their members in the sale of prescription drugs and pharmacists' services. The decree (entered on June 18, 1981) enjoins the defandants from: (1) Entering into or in any other way furthering any agreement or conspiracy to limit price or any other type of advertising of prescription drugs (other than false and misleading advertising) or of the provision of pharmactists' services; (2) adopting or enforcing any Code of Ethics or other standard or policy statement that states or implies that price advertising of prescription drugs is unethical, unprofessional or contrary to its policy; and (3) taking any action concerning any person where such action is based on a failure or refusal to restrict price advertising of prescription drugs.

The modification will allow APhA to comment to Congress or other state or federal administrative agencies on prescription drug advertising directed to the public by drug manufacturers. At the same time, APhA will have to make clear that any comments it makes are not intended to discourage pharmacists from advertising prescription drugs.

The Department has filed with the court a a memorandum setting forth the reasons why the Department believes that modification of the judgment would serve the public interest. Copies of the complaint and final judgment, American Pharmaceutical Association's motion papers, Michigan State Pharmaceutical Association's affidavit, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202/633-2481), and at the Office the of Clerk of the United States District Court for the Western District of Michigan, Federal Building, Grand Rapids, Michigan 49503. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Professions and Intellectual Property, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone 202/724-6335).

Dated: April 24, 1986.

Joseph H. Widmar,

Director of Operation, Antitrust Division.

[FR Doc. 86-9946 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Ganes Chemicals, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 27, 1986, Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II

Drug	Schedule
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (June 2, 1986).

Dated: April 26, 1986.

Gene R. Haislip,

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

[FR Doc. 86-9831 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-38]

Larry L. Kompus, M.D.; Denial of Application

On July 3, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an order to show cause to Larry L. Kompus, M.D., 4166 Stoddard Road, Orchard Lake, Michigan 48033 (Respondent). The order sought to deny an application for registration with the DEA under 21 U.S.C. 823(f) executed by Respondent on March 20, 1985. The statutory predicate for the order was the conviction of Respondent on January 15, 1980, in the State of Michigan, Circuit Court for the County of Oakland, of delivery of a controlled substance (non-narcotic) and delivery of Tuinal. These are felonies relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the order to show cause and the Matter was docketed before Administration Law Judge Francis L. Young. Following prehearing procedures, there was a hearing before Judge Young in Detroit, Michigan on November 7, 1985. Judge Young issued his opinion and recommended ruling on January 13, 1986 and transmitted the record to the Administrator on February 10, 1986. Neither side filed exceptions. The Administrator hereby enters this final order based on the record and the findings of fact of the Administrative Law Judge.

The Administrator finds that the investigation of Respondent began in January, 1979, when a young man, accompanied by his attorney, came to the Bloomfield Township, Michigan, Police Department. The young man related to a detective that he had been a patient of Respondent in 1975 and was admitted to a local hospital for treatment of drug and alcohol abuse. Respondent was a psychiatrist specializing in drug detoxification. The young man told the detective that he had been a patient of Respondent from 1975 until December, 1978, a month before. Supposedly Respondent was treating him for drug abuse. The young man told the detective that Respondent had engaged in homosexual relations with him during this three year period, sometimes in Respondent's office and sometimes in hotels in the metropolitan Detroit area. The young man also said that Respondent had given him quantities of controlled substances to consume and sell. The young man had told this same information to a nurse at a local hospital just a few weeks before his coming to the Bloomfield Police Department, which gave rise to an investigation of Respondent by the hospital. Respondent contacted the young man to discuss the matter with him, and the young man and his attorney in turn came to the police with the information.

The relationship between Dr. Kompus and this man originally had the hallmarks of a legitimate patient-physician relationship, but degenerated into one in which Respondent traded drugs and other things to the man for sexual favors. For example, Judge Young found that the young man wanted a handgun. Respondent wrote a letter to the Royal Oak, Michigan, Police Department, telling the department that the man was capable of handling a weapon. Respondent wrote that letter immediately after the young man permitted Respondent to perform oral sex on him in Respondent's office.

Respondent prescribed Quaaludes (methagualone) and "reds", presumably Tuinal, as well as Placidyl and Valium, for the young man. Respondent told the young man not to fill the prescriptions at the same pharmacy so that Respondent would not "get into trouble." A canvass of area pharmacies by the Bloomfield Police uncovered prescriptions for Tuinal, Quaalude and Placidyl written by Respondent during the summer and fall of 1976 for this young man.

The Administrative Law Judge further found that a typical session between Respondent and this young man would involve Respondent renting a movie projector and showing pornographic films depicting homosexual behavior. They would check into a hotel room and Respondent would give the young man a red pill Respondent alleged was an aphrodisiac. Respondent would also bring alcohol and Stelazine, a non-controlled psychoactive substance. The young man would sometimes bring hashish and marijuana. The men would consume the drugs and alcohol and engage in homosexual activities.

Under the direction of the detective, the young man telephoned Respondent and asked to set up an appointment to speak with him. The officer had obtained a search warrant, as required by Michigan law, for the consensual taping. During the conversation that followed, Respondent told the young man that the investigation at the hospital was getting him into trouble. Respondent pressured the young man to write a letter to the hospital authorities saying that the young man had imagined the homosexual activities that gave rise to the complaint. Respondent gave the young man a total of $80 following this conversation and a prescription for Elavil, another non-controlled psychoactive substance.

Respondent and the young man agreed to meet at the Renaissance Center Hotel in Detroit to further discuss the letter Respondent told the man to write. Officers arrested Respondent at the hotel. He had planned to have another sexual encounter with the young man on this occasion; the police found the alleged aphrodisiac, alcohol and Stelazine in the hotel room.

The Administrator further finds that investigation by the Bloomfield Police led them to another young man with whom Respondent had engaged in sexual relations while supposedly treating him. Respondent told this second young man, following psychological testing, that he had homosexual tendencies. Such news distressed this man, since he was engaged in a heterosexual relationship with a woman at the time and feared that he had contracted venereal disease from her. At this session at Respondent's office, Respondent told this second young man to undress totally, and ended the session by kissing the young man on the lips. This young man had a history of drug abuse and had never engaged in homosexual activities before he encountered Respondent, who was supposedly treating him for drug abuse. When the

Bloomfield detective served a subpoena on this young man in early 1980, his mental state had deteriorated to the point that he was unable to communicate.

The Administrator further finds that Respondent was also sexually involved with a third young man. Again, Respondent was supposedly treating him for drug and alcohol abuse. This young man was blond and blue-eyed, and of small statue. He was 17 years old when Respondent first treated him. Respondent supplied him with Quaalude, Tuinal and Second prescriptions. He and Respondent went on a hunting trip to Harrison, Michigan in November, 1976. Respondent brought along pornographic movies and they engaged in homosexual activities in a motel room. Respondent had registered them as father and son. On one occasion, after refusing several times, this third young man gave in to Respondent's opportuning and dressed in women's undergarments.

The Administrator adopts the finding of the Administrative Law Judge that the preponderance of the evidence establishes that these young men did not manifest any predisposition toward homosexuality prior to becoming involved with Dr. Kompus.

In January, 1980, Respondent pled *nolo contendere* to the controlled substance related felonies and to attempted third degree criminal sexual conduct. He was sentenced to concurrent prison terms of from one to seven years. Respondent actually served about ten months.

The Michigan Board of Medicine summarily suspended Respondent's medical license in early 1979. The summary suspension was dissolved on February 22, 1979, when the Board found that Respondent's ability to practice medicine did not constitute an emergency threat to the public health, safety and welfare. Following a hearing, the Board revoked Respondent's license in August, 1980. In the interim, Respondent agreed to retrict the use of drugs in his practice. Respondent did not surrender a DEA Certificate of Registration previously issued to him until November, 1980. The Board granted Respondent a limited license in 1983, one of the terms being that he remain under the care of a psychiatrist.

The Administrator notes that Respondent is fully licensed to handle controlled substances, with no limitations whatsoever, by the State of Michigan.

Respondent worked briefly at a Veterans' Administration hospital in the Detroit area until he left the position following an exposé of his actions by a Detroit newspaper.

The psychiatrist treating Respondent testified at some length during the hearing. He testified that Respondent's involvements with these patients stemmed from his unhappy relationship with his father, which led to a burning desire to be close to a man. the Administrative Law Judge noted that this same psychiatrist testified in September, 1979, only eight months after Respondent's arrest, that Dr. Kompus "could practice psychiatry with reasonable skill and safety". The Administrator shares the observation of the Administrative Law Judge that this opinion, given so early in the treatment of Respondent, seriously undermines the credibility of the psychiatrist as to his opinion about Respondent's present condition.

Respondent seeks registration in Schedules III, IV and V so he can continue his specialty of drug and alcohol detoxification and treatment. Judge Young found that Dalmane and Librium, two of the drugs Respondent claims he needs in his professional practice, have a street value in Detroit, currently selling for $2 to $5 per dosage unit.

The Administrative Law Judge recommended that the application submitted by Respondent be denied, even as to the limited number of controlled substances Respondent seeks in his practice. The Administrator wholeheartedly adopts this recommendation. The administrator also concurs in this observation of the Administrative Law Judge: "Few, if any, cases coming before this Administrative Law Judge in the past ten years have presented facts showing professional wrongs aproaching the enormity of those in this case. The actions of this Respondent were those of a very sick man."

Examining the criteria in 21 U.S.C. 823(f) he is required to consider in determining whether to register a practitioner, the Administrator finds that the registration of Respondent is most emphatically not in the public interest. This order discussed at length Respondent's experience in dispensing controlled substances and his conviction record relating to controlled substances, two of the factors the Administrator is required to consider. 21 U.S.C. 823(f)(2) and (3). The Administrative Law Judge and the administrator both find the fifth factor, "Such other conduct which may threaten the public health and safety", to be relevant. Judge Young expressed it succinctly: "Surely a psychiatrist's engaging in homosexual conduct with patients coming to him for help in matters of substance abuse constitutes such conduct—particularly so when the psychiatrist uses those substances to obtain his personal gratification."

Dr. Kompus used contolled substances that he prescribed with his DEA registration to help him pursue his own deviant wishes at the expense of the sick individuals who had come to him for help. Even the limited registration sought by Respondent is inappropriate, given his history and convictions. The Administrator can find scant assurance in this record that Respondent will not regress to his past horrific conduct, which involved the DEA registration with which he was entrusted. The Administrator is charged with protecting the public. In this most egregious of cases, he would be abdicating his responsibilities if he were to register Larry Kompus, M.D., in any schedule or for any controlled substance.

Having considered the evidence in the record, the Administrator, under the powers given the Attorney General in 21 U.S.C. 823 and 824 and delegated to the Administrator in 21 U.S.C. 871 and 28 CFR Part 0.100, hereby denies the application for registration executed by Larry L. Kompus, M.D., on March 2, 1985, for the reason that respondent's registration is inconsistent with the public interest, and for the further statutory reason that Respondent was convicted a felony relating to controlled substances. Said denial is effective immediately.

John C. Lawn,

Administrator.

April 28, 1986.

[FR Doc. 86-9832 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-37]

Ozie T. Faison d/b/a Smith Discount Drugs; Denial of Application

On June 17, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an order to show cause to Ozie T. Faison, Jr., d/b/a Smith Discount Drugs, 1046 Broad Street, New Bern, North Carolina, 28560 (Respondent). The order to show cause sought to deny an application executed on March 26, 1985, by Ozie T. Faison, Jr., R.Ph, the practicing pharmacist at Smith Discount Drugs. The statutory predicate for the order to show cause under 21 U.S.C. 823(f) was the conviction of Ozie T. Faison, Jr., in the United States District Court for the Eastern District of North Carolina, of conspiracy to distribute Schedule II controlled

substances in violation of 21 U.S.C. 846, a felony relating to controlled substances. Respondent pharmacy, through counsel, requested a hearing on the issues raised by the order to show cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young in Washington, DC, on November 13, 1985. Judge Young issued his opinion and recommended ruling on January 14, 1986. Neither side filed exceptions to the recommended ruling. The Administrator hereby enters his final order based on the findings of fact of the Administrative Law Judge.

The Administrator finds that Ozie T. Faison, Jr., was convicted of conspiring with a physician, John Eldridge Littman, M.D., to distribute Schedule II controlled substances. Faison was a corporate officer of Smith Discount Drugs from October, 1980 through July, 1981, and Dr. Littman was a 50% owner of the pharmacy during this time, the period of activities for which both were convicted.

The Administrator further finds that during the spring and summer of 1981, a young woman sold Dilaudid three times to DEA Special Agents in New Bern, North Carolina. She purchased the Dilaudid from Dr. Littman, who in turn had obtained it from Faison at Smith Discount Drugs. The woman sold the Dilaudid to the Agents for $2,000 for a bottle of 100. She was arrested after the third such sale. Following the arrest, a Special Agent of the North Carolina State Bureau of Investigation (SBI) conducted an audit of several Schedule II controlled substances at Respondent pharmacy. This audit revealed a shortage of 300 Dilaudid 4mg., or 15.79%, and 1,460 Sopor 300 mg., or 35.61% of the total for which the pharmacy was accountable.

During a second audit of the pharmacy, the Agent conducting the audit noticed a questionable sequence of Dilaudid prescriptions. Dr. Littman had written prescriptions for 890 Dilaudid between October, 1980 and June, 1981. He wrote the prescriptions for 30, 30 and 40 dosage units per month, except for October, 1980, when he wrote three prescriptions for 30 Dilaudid each. The prescription bore dates that were consecutive or nearly consecutive. In attempting to verify the prescriptions, the SBI Agent learned that several of the addresses on the prescriptions were fictitious, while a number of the "patients" were non-existent or did not live at the addresses indicated. These were the only Dilaudid prescriptions in the pharmacy. Faison admitted to the Agent that it was "unusual" for a "patient" to have two different addresses, since the store was a neighborhood pharmacy and Faison tried to know a majority of his customers.

The Administrator adopts the finding of the Administrative Law Judge that Faison received $1,000 from Dr. Littman for each bottle of 100 Dilaudid he sold to Dr. Littman, although the regular retail price of Dilaudid for legitimately dispensed Dilaudid was $40 per 100. Dilaudid was selling on the streets of New Bern at that time for between $35 and $50 per tablet. Faison maintained at the hearing that he only received the legitimate $40 from Dr. Littman.

As to the other shortages, the Administrator finds that Faison offered various explanations to the SBI Agent. Faison told the Agent that a shortage of Sopor, then a Schedule II controlled substance, occurred when patients brought in bottles for refills and he would forget to fill out prescriptions for signature by a physician, usually Dr. Littman. This explanation indicates that Faison apparently made a practice of writing out the prescriptions and saving them for Dr. Littman's signature. Such a practice is intolerable with regard to a Schedule II substance. Faison also said that he gave quantities of Sopor to two individuals who badgered him for the drug without any prescription. Faison gave quantities of Eskatrol to two female truck drivers who sought the drug to remain awake. This is clearly unlawful. Faison also indicated to the Agent that while his statements about Dr. Littman, an older man and long-time business associate of his father, were true, Faison could not testify in court against Dr. Littman. Faison invited the Agent to return to the pharmacy so that he could supply him with a new story. The Agent declined this invitation.

In mitigation, Faison testified at the hearing that he knew something was wrong with the way in which Dr. Littman was prescribing Dilaudid, but he did nothing since he trusted Dr. Littman and had known him since childhood. Faison was 35 years old at the time of the crimes of which he was convicted and a recent graduate of the University of North Carolina School of Pharmacy. Respondent also presented a character witness and several written statements that Faison enjoys an excellent reputation in the community. Smith Discount Drugs is the only black-owned pharmacy in New Bern and without a DEA registration, would most likely have to close.

The Administrator adopts the findings of fact of the Administrative Law Judge. It is clear that this pharmacy, through Ozie Faison, Jr., abused its controlled substances privileges and caused the diversion of controlled substances into illegitimate channels. Faison now seeks to resume operation at the same pharmacy. His record in the handling of controlled substances is so poor that the Administrator must follow the recommendation of the Administrative Law Judge and deny this application.

Judge Young states that Faison was hardly an immature youngster when he began the practice of pharmacy at Smith Discount Drugs. Within 18 months of taking charge at the pharmacy, he connived with a physician to send about 900 known dosage units of Dilaudid into illegal channels. In addition, Faison liberally dispensed other controlled substances without prescriptions, or in response to prescriptions he knew were suspect. This record is one of an individual who should not be entrusted with a DEA Certificate of Registration.

The Administrator is not unmindful of the unique position of Smith Discount Drugs in the life of New Bern. However, the record in this case clearly shows that Faison cannot be trusted with the handling of controlled substances. The public interest would not be served by the registration of this pharmacy.

Having considered the record in this matter, the Administrator, as the delegee of the Attorney General under 21 U.S.C. 871 and 28 CFR Part 0.100, hereby denies under 21 U.S.S. 823 and 824 the application for DEA registration executed by Ozie T. Faison, Jr., d/b/a Smith Discount Drugs dated March 25, 1985, said denial effective immediately.

John C. Lawn,

Administrator.

April 28, 1986.

[FR Doc. 86-9834 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Penick Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 26, 1986, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pholcodine (9314)	II
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II

Drug	Schedule
Hydrocodone (9193)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9610)	II
Tincture of opium (9630)	II
Powdered opium (9639)I	II
Granulated opium (9640)	II
Mixed alkaloids of opium (9648)	II
Concentrate of poppy straw (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 2, 1986.

Dated: April 28, 1986.

Gene R. Haislip,

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

[FR Doc. 86-9833 Filed 5-1-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements 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 the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements 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 N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which as been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

New York Business Birth Survey
BLS 790 BBS
Other—one time
State and local government; Business or other for profit;
Federal agencies or employees; Non-profit institutions;
Small business or organizations.
2040 responses; 408 hours; 1 form

The Current Employment Statistics Survey, which produces national employment, hours and earnings data by industry, has a lagtime in estimating new business employment. This survey will lessen this lagtime and provide more acurate estimates of new business employment.

Extension

Employment Standards Administration

Certification by School Official
1215-0061; CM-981
Annually
State or local governments; Non-profit institutions
3,000 responses; 500 hours; 1 form

CM-981 is completed by a school official to verify if a beneficiary's dependent, aged 18 to 23, qualifies as a full-time dependent student.

Notice of Issuance of Insurance Policy
1215-0059; CM-921
Annually
Businesses or other for-profit; Small businesses or organizations
5,000 responses; 833 hours; 1 form

The CM-921 provides insurance carriers with the means to supply DCMWC with information which shows that a responsible coal mine operator is insured pursuant to the requirements set forth by the Black Lung Benefits Reform Act of 1972.

Bureau of Labor Statistics

Report on Employment, Payroll, and Hours
1220-0011; BLS-790 A, B, B-M, C, E, H, J-F, J-Fd, J-L, and S
Monthly
State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations
3,276,000 responses; 380,680 hours; 10 forms

The Current Employment Statistics program provides estimates of current monthly employment, hours, and earnings, by industry, State, and MSA. Data provided are fundamental inputs in the economic decision process at all levels of government, private enterprise, and organized labor. The estimates are vital to the calculation of the Gross National Product and the Federal Reserve Board's Index of Industrial Production.

Reinstatement

Employment and Training Administration

Petition for Adjustment Assistance
1205-0192; ETA 8560 & ETA 8559
On occasion
Individuals or households; Business or other for-profit;
Small businesses or organizations
1,100 respondents; 275 hours; 1 form

These petitions are used by American workers applying to U.S. Department of Labor for eligibility to receive work trade adjustment assistance in accordance with provisions of the Trade Act of 1974 as amended. The petition initiates action on the part of the Department to determine if workers are eligible.

Signed at Washington, DC, this 29th day of April, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-9863 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

State Employment Security Agency System Administrative Financing; Roundtable Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and purpose for a meeting of the Roundtable on the administrative financing mechanism for the State Employment Security Agency (SESA) programs.

DATE: May 9, 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: Frances Perkins Building, Room S4215-C, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213 (202/376-6636).

SUPPLEMENTARY INFORMATION: The Roundtable first met on March 25, 1986, and reviewed the results of the public comments on the SESA administrative financing system. The group agreed that the Employment and Training Administration and a technical workgroup composed of State and Federal staff should proceed on a two-track approach of developing both short-term and long-term changes to the present system.

The purpose of this meeting is to review the status of the final package of short-term changes on which the Department of Labor is proceeding. The Roundtable will also continue its exploration of long-term options for change

Signed at Washington, DC, on April 29, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-9937 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,641]

Switchcraft, Incorporated, Paxton, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1986 in response to a worker petition received on November 6, 1986 which was filed on behalf of workers and former workers at Switchcraft, Incorporated, Paxton, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-9864 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,595]

Texas Apparel Company, Del Rio, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 1985 in response to a worker petition received on October 7, 1985 which was filed on behalf of workers at the Del Rio, Texas plant of Texas Apparel Company.

An active certification covering the petitioning group of workers remains in effect (TA-W-16, 187A) issued October 30, 1985 with an expiration date of January 1, 1987, two years after the impact date. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 23rd day of April 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-9865 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II.

Iowa: IA86-11 ..... pp.60c-60d.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Illinois: IL86-18 (Jan. 3, 1986) .. pp.254-256.
Virginia:
VA86-5 (Jan. 3, 1986)..... p.1065.
VA86-15 (Jan. 3, 1986)..... p.1089.

Volume II

Iowa:
IA86-5 (Jan. 3, 1986) ..... pp.43-48.
IA86-6 (Jan. 3, 1986) ..... p.52.
Illinois: IL86-18 (Jan. 3, 1986) .. pp.214-216.
Indiana:
IN86-1 (Jan. 3, 1986) ..... pp.220-223.
IN86-2 (Jan. 3, 1986) ..... pp.234-238, pp.243-245.
IN86-3 (Jan. 3, 1986) ..... pp.251-254.
IN86-4 (Jan. 3, 1986) ..... pp.262-265.
IN86-5 (Jan. 3, 1986) ..... pp.275-277, p.281.
IN86-6 (Jan. 3, 1986) ..... pp.284-285, p.287.
Louisiana:
LA86-4 (Jan. 3, 1986) ..... pp.355-356.
LA86-5 (Jan. 3, 1986) ..... pp.360-361, p.363.
Michigan:
MI86-4 (Jan. 3, 1986)..... pp.424-427.
MI86-6 (Jan. 3, 1986)..... p.443.
MI86-17 (Jan. 3, 1986)..... pp.486-487.
Missouri:
MO86-1 (Jan. 3, 1986)..... pp.541-544.
MO86-2 (Jan. 3, 1986)..... pp.559-562.
MO86-3 (Jan. 3, 1986)..... pp.569-570.
MO86-4 (Jan. 3, 1986)..... p.576.
MO86-6 (Jan. 3, 1986)..... p.583.
MO86-7 (Jan. 3, 1986)..... p.590.
MO86-9 (Jan. 3, 1986)..... pp.598-599.
MO86-10 (Jan. 3, 1986)..... pp.606-607.
MO86-11 (Jan. 3, 1986)..... p.611.
Texas:
TX-1 (Jan. 3, 1986) ..... p.841.
TX-2 (Jan. 3, 1986) ..... pp.845-847.
TX-5 (Jan. 3, 1986) ..... p.854.
TX-7 (Jan. 3, 1986) ..... pp.860-862.
TX-14 (Jan. 3, 1986) ..... p.880.
TX-18 (Jan. 3, 1986) ..... p.891.
TX-19 (Jan. 3, 1986) ..... p.894.
Listing by Decision (index)..... p.xlix.

Volume III

California:
CA86-2 (Jan. 3, 1986)..... pp.43,50.
CA86-4 (Jan. 3, 1986)..... pp.66-73.
Colorado:
CO86-1 (Jan. 3, 1986)..... pp.97-98.
CO86-3 (Jan. 3, 1986)..... pp.108-114.
Listing by Location (index)..... p.xviii.
Listing by Decision (index)..... p.xix.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The Subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of April 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-9689 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's

compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: April 24, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-76-141-C	FR 13959	Alabama By-Products Corp.	30 CFR 75.1710	Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-83-129-C	FR 56868	Consol Pennsylvania Coal Co	30 CFR 75.1700	Plugging and mining through abandoned oil and gas wells with specified precautions in lieu of establishing and maintaining barriers around such wells considered acceptable alternate method. Granted with conditions.
M-83-174-C	FR 13761	Consolidation Coal Company	30 CFR 75.326	Use of air from the belt entry to ventilate the working face considered acceptable alternate method. Granted with conditions.
M-84-97-C	FR 22577	Olga Coal Company	30 CFR 75.305	Petitioner's proposal to establish an air measurement station where the quantity, quality and the direction of the air current will be measured by a certified person considered acceptable alternate method. Granted with conditions.
M-84-145-C	FR 40499	Kitt Energy Corporation	30 CFR 75.1105	Petitioner's proposal to install a low-level carbon monoxide detection system in all belt entries used as intake air courses and to enclose the affected installations in fire-proof structures considered acceptable alternate method. Granted in part with conditions.
M-84-169-C	FR 40501	Peabody Coal Company	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted.
M-84-171-C	FR 26160	Eastern Assocoated Coal Corporation	30 CFR 75.1714-2(e)(3)	Petitioner's proposal to store SCSR's while miners use the belts for mantrips considered acceptable alternative. Granted with conditions.
M-84-175-C	FR 40508	Wolf Creek Collieries Company	30 CFR 75.902	Petitioner's proposal to use belt power contactors in lieu of low- and medium-voltage ground check monitor circuits considered acceptable alternate method. Granted with conditions.
M-84-177-C	FR 35050	Barnes & Tucker Company	30 CFR 75.305	Petitioner's proposal to establish inlet and outlet monitoring stations to measure the air on a weekly basis considered acceptable alternative. Granted with conditions.
M-84-207-C	FR 40497	Consolidation Coal Co	30 CFR 75.1105	Petitioner's proposal to enclose the electric equipment in a fireproof structure and install an automatic dry chemical fire suppression device activated by heat considered acceptable alternate method. Granted with conditions.
M-84-216-C	49 FR 46824	Consolidation Coal Company	30 CFR 75.305	Petitioner's proposal to establish a ventilation evaluation point at a specified location to take air and gas measurements considered acceptable alternate method. Granted with conditions.
M-84-237-C	49 FR 47129	Consolidation Coal Company	30 CFR 75.1105	Petitioner's proposal to enclose the electric equipment in a fireproof structure, equipped with automatic closing doors activated by thermal-devices, considered acceptable alternate method. Granted with conditions.
M-84-248-C	50 FR 575	Southern Ohio Coal Company	30 CFR 75.1700	Petitioner's proposal to plug and mine through abandoned wells penetrating the coal bed considered acceptable alternate method. Granted with conditions.
M-84-273-C	50 FR 19820	A & F Coal Company, Inc.	30 CFR 75.503	Use of fabricated metal locking devices in lieu of padlocks to secure battery plugs to machine mounted battery receptables on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-11-C	50 FR 13888	Consolidation Coal Company	30 CFR 75.326	Use of air from the belt entry to ventilate the working face considered acceptable alternate method. Granted with conditions.
M-85-12-C	50 FR 13889	Consolidation Coal Company	30 CFR 75.1103-4(a)	Installation of a fire detection system using low-level carbon monoxide monitoring devices in all belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-85-17-C	50 FR 27074	Renegade Coal Company	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-85-32-C	50 FR 27703	K. & L. Coal Company	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-85-49-C	50 FR 32124	Emery Mining Corporation	30 CFR 75.1101-8	Petitioner's proposal to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt converyor drives considered acceptable alternative, granted with conditions.
M-85-60-C	50 FR 32123	Consolidation Coal Company	30 CFR 75.1700	Plugging and mining through abandoned oil and gas wells with specified precautions in lieu of establishing and maintaining barriers around such wells considered acceptable alternate method. Granted with conditions.
M-85-10-M	50 FR 33123	Tenneco Minerals Company	30 CFR 75.21046	Petitioner's proposal to develop rooms up to 350 feet before crosscuts or a breakthrough occurs during the retreating phase of panel extraction considered acceptable alternate method. Granted with conditions.
M-85-12-M	50 FR 33122	Chevron Resources Company	30 CFR 75.9088	Petitioner's proposal to use a side boom for positioning pipe along a right-of-way in lieu of ROPS considered acceptable alternate method. Granted with conditions.

[FR Doc. 86-9868 Filed 5-1-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Hearing

ACTION: Notice of hearing.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in the Ballroom of the Crowne Plaza Holiday Inn at 5985 W. Century Boulevard, Los Angeles, California.

DATE: Thursday, May 22, 1986, 8:00 a.m. to noon.

Status: The hearing is open to the public.

Matters to be discussed: Commission members will hear testimony from various witnesses representing both the public and private sectors. They will

focus on the implementation of the Job Training and Partnership Act in the state of California and on economic development and labor market issues, pertinent especially to the region but also to the nation in general.

FOR FURTHER INFORMATION, CONTACT: Mr. Scott W. Gordon, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through June 16, 1986. Copies of the testimony and material prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW., Suite 300, Washington, DC 20005.

Signed this 25th day of April, 1986.

Scott W. Gordon,

Director.

[FR Doc. 86–9862 Filed 5–1–86; 8:45 am]

BILLING CODE 4510–30–M

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a public meeting of the National Commission for Employment Policy in the Ballroom of the Crowne Plaza Holiday Inn at 5985 W. Century Blvd. Los Angeles, California.

DATE: Thursday, May 22, 1986 1:30 P.M. to 4:30 P.M.

Status: The meeting is open to the public.

Matters to be discussed: Commission members will discuss their policy priorities regarding research and organization for FY 86. Other discussion includes the status of the Commission's *11th Annual Report*, the JTPA-summary report, the outreach program, and findings and policy recommendations concerning adjustment to structural changes in the economy.

FOR FURTHER INFORMATION, CONTACT: Mr. Scott W. Gordon, Director, National Commission for Employment Policy, 1522 K Street, NW, Suite 300, Washington, DC 20005 (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress, Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 25th day of April, 1986.

Scott W. Gordon,

Director.

[FR Doc. 86–9814 Filed 5–1–86; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

April 29, 1986.

The next meeting of the National Commission on Agricultural Trade and Export Policy will be held May 12 and May 13 at the Hyatt Arlington, 1325 Wilson Boulevard, Arlington, Virginia.

The purpose of the meeting is to finalize recommendations for the final report of the Commission and *AGEXPORT '86.* The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 86–9902 Filed 5–1–86; 8:45 am]

BILLING CODE 3410–05–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by ———.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202–786–0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category

Reinstatement

Title: Panelist's Review Comments

Form Number: 3136–0064

Frequency of Collection: 1 per year from each respondent for each proposal

Respondents: Panelists who evaluate proposals

Use: To collect information that reflects a panelist's evaluation and rating of a proposal. The information is used to determine which grants should receive funding, and is provided (without names or other identifying information) to rejected applicants upon written request.

Estimated Number of Respondents: 70 per year.

Estimated Hours for Respondents to Provide Information: 1 hour per proposal: includes time spent reading the proposal and writing evaluation

on the "Panelist's Review Comments" Form.

Susan Metts,

Director of Administration.

[FR Doc. 86-9930 Filed 5-1-86; 8:45 am]

BILLING CODE 7536-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Interdisciplinary Arts Section) to the National Council on the Arts will be held on May 19-21, 1986 from 9:00 a.m. to 5:30 p.m., Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public, on May 19, 1986, from 9:00-a.m. to 10:30-a.m., and May 21, 1986 from 2:00-p.m. to 5:30-p.m. to discuss General Program Overview and Policy and Guidelines.

The remaining sessions of this meeting on May 19, 1986 from 10:30-a.m. to 5:30-p.m., and May 20, 1986 from 9:00-a.m. to 5:30-p.m., and May 21, 1986 from 9:00-a.m. to 1:00-p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 25, 1986.

[FR Doc. 86-9893 Filed 5-1-86; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Section) to the National Council on the Arts will be held on May 20-21, 1986 from 9:00 a.m. to 6:00 p.m., and May 22, 1986 from 9:00 a.m. to 5:00 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 22, 1986 from 1:00 p.m. to 3:00 p.m. to discuss Policy and Guideline Review and 5-Year Planning Document.

The remaining sessions of this meeting on May 20-21, 1986 from 9:00 a.m. to 6:00 p.m., May 22, 1986 from 9:00 a.m. to 1:00 p.m., and May 22, 1986 from 3:00 p.m. to 5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 25, 1986.

[FR Doc. 86-9895 Filed 5-1-86; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Challenge Section) to the National Council on the Arts will be held on May 20, 1986 from 9:00 a.m. to 5:30 p.m., Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 25, 1986.

[FR Doc. 86-9894 Filed 5-1-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Advanced Scientific Computing; 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 Advanced Scientific Computing
Dates and Times:
May 22—8:00 A.M.—5:00 P.M.
May 23—8:00 A.M.—3:00 P.M.
Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550
Type of Meeting:

Open

May 22—8:00 A.M.—4:00 P.M.
May 23—8:00 A.M.—3:00 P.M.

Closed

May 22—4:00 P.M.—5:00 P.M.
Contact Person: Dr. John W.D. Connolly, National Science Foundation, Washington, DC 20550, Phone: 202/357-7558
Summary of Minutes: May be obtained from John W.D. Connolly
Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing.
Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions and

budget priorities. The closed session will discuss pending proposals.

Reason for Closing: The closed session of the meeting will deal with a discussion of proposals containing the names of applicant institutions and principal investigators and privileged institutions and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of 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 of NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 29, 1986.

[FR Doc. 86–9949 Filed 5–1–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–529]

Palo Verde Nuclear Generating Station, Unit 2; Arizona Public Service Company, et al. Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–51, (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 2 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. On December 9, 1985, the Commission issued Facility Operating License No. NPF–46, which authorized operation of Palo Verde Nuclear Generating Station, Unit 2 at power levels not in excess of 190 megawatts thermal. Facility Operating License No. NPF–51 supercedes Facility Operating License No. NPF–46.

Palo Verde Nuclear Generating Station, Unit 2 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of this License has been authorized by the Atomic Safety and Licensing Board in its Initial Decision, dated December 30, 1982, and by the Commission at its meeting on April 23, 1986. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this section, see (1) Facility Operating License No. NPF–51, with Technical Specifications (NUREG–1181) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated December 15, 1981; (3) the Commission's Safety Evaluation Report on Palo Verde dated November 1981; Supplement Nos. 1 through 10 dated February 1982, May 1982, September 1982, March 1983, October 1984, December 1984, May 1985, December 1985, and April 1986, respectively; (4) the Commission's related Safety Evaluation Report on CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 September 1983; (5) the Final Safety Analysis Report and amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981, (8) the Final Environmental Statement dated March 1982; and (9) the Initial Decision issued by the Atomic Safety and Licensing Board dated December 30, 1982.

The documents are available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC, and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF–51 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director Division of PWR Licensing-B. Copies of the Safety Evaluation Report and its Supplements 1 through 10 (NUREG–0857), the Final Environmental Statement (NUREG–0841) and the Technical Specifications (NUREG–1181) may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. NUREG–0857 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 24th day of April, 1986.

For The Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–9823 Filed 5–1–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

Applications, Issuance of Amendments to Facility Operating License and Final Determination of No Significant Hazards Consideration; GPU Nuclear Corp.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 116 to Facility Operating License No. DPR–50 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of Three Mile Island Nuclear Station, Unit 1 (the facility), located in Dauphin County, Pennsylvania. The amendment is effective as of the date of issuance.

This amendment revises the repair limits for the steam generator tubes under a very restrictive set of circumstances as described in the request. Basically, for certain defects located on the primary side of the tubes, the amendment changes the mandatory repair limit from 40% to 50% throughwall penetration providing the defect is less than 0.55 inches long. The amendment is also only effective until the next refueling outage at which time the steam generator tube repair criteria will be re-evaluated.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** (51 FR 7157) on February 28, 1986. A request for a hearing was filed on March 10, 1986, by Three Mile Island Alert, Inc.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any persons, in advance of the holding and completion of any required hearing, where it is determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no evironmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to this action see: (1) The application for amendment dated February 4, 1986, (2) Amendment No. 116 to Facility Operating License No. DPR–50 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 18th day of April 1986.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing–B.

[FR Doc. 86–9931 Filed 5–1–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, 202–632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 25, 1986 (51 FR 10289). Individual authorities established or revoked under Schedules A, B, or C between March 1, 1986, and March 31, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established during March. However, the following exception is revoked:

Department of the Army

Schedule A excepted appointing authority for temporary and intermittent laborers and munitions handlers engaged in handling ordnance materials was revoked, effective March 21, 1986, because it is no longer used.

Schedule B

The following exceptions are established:

Department of Navy

One Director and four Research Psychologists at the GS–15 or professor level in the Defense Personnel Security Research and Education Center. Effective March 26, 1986.

National Endowment for the Humanities

One Humanist Administrator (Assistant Director), Texts Program, Division of Research Programs. Effective March 26, 1986.

One Humanist Administrator, Tools Program, Reference Materials Program, Division of Research Programs. Effective March 26, 1986.

One Humanist Administrator, Access Program, Reference Materials Program, Division of Research Programs. Effective March 26, 1986.

One Humanist Administrator, Project Research, Interpretive Research Program, Division of Research Programs. Effective March 26, 1986.

One Humanist Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs. Effective March 26, 1986.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective March 5, 1986.

One Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services. Effective March 7, 1986.

One Confidential Assistant to the Secretary. Effective March 11, 1986.

Department of Commerce

One Confidential Aide to the Special Assistant to the Secretary. Effective March 4, 1986.

One Confidential Assistant to the Deputy Assistant Secretary, International Economic Policy. Effective March 14, 1986.

One Special Assistant to the Administrator, National Oceanic and Atmospheric Administration. Effective March 14, 1986.

One Congressional Affairs Officer to the Director, Minority Business Development Agency. Effective March 14, 1986.

One Supervisory Public Affairs Specialist to the Under Secretary for the International Trade Administration. Effective March 14, 1986.

One Congressional Liaison Specialist to the Under Secretary for the International Trade Administration. Effective March 17, 1986.

One Secretary (Typing) to the Special Assistant to the Secretary. Effective March 21, 1986.

One Confidential Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective March 26, 1986.

One Confidential Aide to the Deputy Under Secretary for Travel and Tourism. Effective March 28, 1986.

Department of Defense

One Private Secretary to the Deputy Under Secretary of Defense, Defense Test and Evaluation. Effective March 14, 1986.

One Private Secretary to the Deputy Under Secretary of Defense, Strategic and Theater Nuclear Forces. Effective March 17, 1986.

One Private Secretary to the Director for Strategic Defense Initiative Organization. Effective March 20, 1986.

One Special Assistant to the Deputy Assistant Secretary of Defense, Near Eastern and South Eastern Affairs. Effective March 21, 1986.

Department of Education

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective March 4, 1986.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education, Effective March 10, 1986.

One Special Assistant to the Director, Programs for the Improvement of Practice. Effective March 12, 1986.

One Personal Assistant to the Deputy Under Secretary for Management. Effective March 12, 1986.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective March 17, 1986.

One Special Assistant to the Deputy Assistant Secretary for Higher Education Programs. Effective March 21, 1986.

One Special Assistant to the Director, Legislative Liaison Staff, Office of Legislation. Effective March 27, 1986.

Department of Energy

One Staff Assistant to the Special Assistant to the Secretary of Energy. Effective March 6, 1986.

One Legal Advisor to a Member of the Federal Energy Regulatory Commission. Effective March 11, 1986.

One Public Affairs Specialist to the Director, Division of Public Affairs. Effective March 24, 1986.

Department of Health and Human Services

One Special Assistant to the Director of Public Affairs, Office of Human Development Services. Effective March 10, 1986.

One Special Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration. Effective March 10, 1986.

One Special Assistant to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services. Effective March 11, 1986.

One Special Assistant to the Chief of Staff Effective March 17, 1986.

One Confidential Assistant to the Deputy Administrator, Health Care Financing Administration. Effective March 20, 1986.

One Staff Assistant to the Associate Commissioner, Office of Governmental Affairs, Social Security Administration. Effective March 21, 1986.

Department of the Interior

One Deputy Assistant Secretary to the Assistant Secretary for Land and Minerals Management. Effective March 7, 1986.

One Special Assistant to the Assistant Secretary for Territorial and International Affairs. Effective March 7, 1986.

One Public Affairs Specialist to the Deputy Assistant Secretary, Land and Minerals Management. Effective March 14, 1986.

One Congressional Liaison Specialist to the Director, Office of Surface Mining Reclamation and Enforcement. Effective March 17, 1986.

One Congressional Liaison Officer to the Director, Minerals Management Service. Effective March 26, 1986.

One Special Assistant to the Commissioner, Bureau of Reclamation. Effective March 28, 1986.

Department of Justice

One Special Assistant to the Assistant Attorney General, Office of Legal Counsel. Effective March 4, 1986.

One Deputy Assistant Attorney General, Office of Legal Policy. Effective March 4, 1986.

One Confidential Assistant to the Deputy Associate Attorney General. Effective March 4, 1986.

Two Staff Assistants to the Attorney General. Effective March 14, 1986.

One Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs. Effective March 21, 1986.

One Confidential Assistant to the Deputy Associate Attorney General. Effective March 27, 1986.

Department of Labor

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective March 11, 1986.

One Special Assistant to the Deputy Under Secretary for Employment Standards. Effective March 24, 1986.

Department of the Navy

One Private Secretary to the Secretary of the Navy. Effective March 21, 1986.

Department of State

One Special Assistant to the Assistant Secretary, Bureau of East Asian Affairs. Effective March 27, 1986.

Department of the Treasury

One Staff Assistant to the Assistant Secretary (Management). Effective March 12, 1986.

One Confidential Assistant to the Deputy Assistant Secretary (Public Liaison). Effective March 17, 1986.

U.S. Arms Control and Disarmament Agency

One Secretary (Steno) to the Special Advisor to the President and Secretary of State on Arms Control Matters. Effective March 28, 1986.

Council of Economic Advisers

One Secretary to the Member. Effective March 14, 1986.

Environmental Protection Agency

One Special Assistant to the Executive Assistant to the Administrator. Effective March 14, 1986.

Federal Mine Safety and Health Review Commission

One Attorney-Advisor to the Chairman. Effective March 21, 1986.

One Confidential Secretary to a Commissioner. Effective March 24, 1986.

One Confidential Assistant to the Chairman. Effective March 28, 1986.

Federal Maritime Commission

One Secretary (Typing) to a Commissioner. Effective March 11, 1986.

One Secretary to the Chairman. Effective March 28, 1986.

General Services Administration

One Confidential Assistant to the General Counsel. Effective March 31, 1986.

National Transportation Safety Board

One Special Assistant to a Member. Effective March 11, 1986.

President's Commission on White House Fellowships

One Special Assistant to the Director. Effective March 27, 1986.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge. Effective March 27, 1986.

United States Information Agency

One Special Assistant to the Director, Office of Public Liaison. Effective March 7, 1986.

One Program Assistant to the Coordinator, U.S.-Soviet Exchange Initiative. Effective March 28, 1986.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Logistics. Effective March 27, 1986.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-9955 Filed 5-1-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23179 SR-AMEX-85-4]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") submitted on March 21, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Amex Rule 602 (Designation of Arbitrators), Rule 605 (Initiation of Proceedings), Rule 606 (Rules of General Application) and Rule 601 (Panel of Arbitrators) relating to arbitration procedures.[1] Amex also proposes to amend Amex Disciplinary Rule 12 (Disclosure of the Result of Disciplinary Proceeding).[2]

The proposed amendment to Amex Rule 602(a) would provide the Exchange's Director of Hearings with discretion to appoint a panel of three or five arbitrators in cases where the amount in controversy is less than $500,000. The Amex states that this change is proposed because of the increase in the number of cases in which $100,000 or more is claimed.[3] Where the amount in controversy is $500,000 or more, the arbitration panel shall consist of five arbitrators, except that the Amex would permit the parties to agree in writing to a panel of three rather than five arbitrators.

Rule 605(b), as amended, would permit the arbitration panel to impose a sanction on a party to an arbitration proceeding who fails to file an answer within the allotted time period from receipt of service. The proposed change would permit an adversary party to file a written objection requesting that the arbitrators, in their discretion, bar the respondent from presenting any matter, arguments or defenses at the hearing. This provision would not prohibit the respondent from submitting a response at the time of the hearing. The arbitration panel would make the final determination as to whether such a response would be accepted.

Amex Rule 606(e), as amended, would require a party requesting adjournment after the panel of arbitrators has been appointed to pay a fee equal to the filing fee, but not exceeding $100. The panel of arbitrators would have the discretion to waive the fee.

Amex Rule 601, as amended, would permit the Chairman of the Exchange to select and approve Exchange arbitrators. This would eliminate the current requirement that arbitrators must be approved by the Amex Board of Governors.

The proposed change to Amex Disciplinary Rule 12 would apply to summary proceedings conducted by Amex Disciplinary Committees the requirement that the results of such proceedings be publicly announced unless the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors. This publication requirement currently applies only to the results of formal disciplinary proceedings conducted by Amex Disciplinary Panels.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 21910, March 29, 1985) and by publication in the **Federal Register** (50 FR 14063, April 9, 1985). No written comments were received by the Commission on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 28, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9900 Filed 5-1-86; 8:45 am]

BILLING CODE 8010-01-M

[1] According to Amex, the proposed amendments to Amex's arbitration rules would bring them into conformity with the recent amendments made to the Uniform Arbitration Code of the Securities Industry Conference on Arbitration ("SICA"). In this regard, the Commission has also received proposed rule changes providing for amendments similar to those proposed by Amex from the New York Stock Exchange, Inc. (File No. SR-NYSE-86-3); the National Association of Securities Dealers (File No. SR-NASD-85-9); the Chicago Board Options Exchange (File No. SR-CBOE-85-46 notice of which was given in Securities Exchange Act Release No. 222746, December 30, 1985; 51 FR 798); the Midwest Stock Exchange, Inc. (File No. SR-MSE-86-2); and the Pacific Stock Exchange, Inc. (File No. SR-PSE-86-6).

[2] On December 26, 1985, Amex submitted Amendment No. 1 to the proposed rule change which, at the request of the Commission staff, supplements the Exchange's statement of the purpose of, and statutory basis for, the proposed changes in the arbitration rules. The substance of these revisions is incorporated into the description of the proposed changes set forth below.

[3] Currently, Amex rule 602(a) provides that where the amount in controversy does not exceed $100,000 the Arbitration Director may appoint a panel of from three to five arbitrators. Where the amount in controversy exceeds $100,000, the rule currently requires the appointment of a panel of five arbitrators.

DEPARTMENT OF STATE

[Public Notice 962]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Application/License for Temporary Import of Unclassified Defense Articles

Form Number—DSP-61.

Type of Request—Extension.

Frequency—On occasion.

Respondents—Importers of defense materials.

Estimated number of responses—2,076.

Estimated number of hours needed to respond—713.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: April 18, 1986.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 9892 Filed 5-1-86; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 963]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)) and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on April , 1986.

The altered system is entitled "Family Liaison Office Centralized Data Bank of Family Member Skills and Direct Communication Network Records, STATE–49." The existing system, the "Skills Catalogue Records, STATE–49," will be altered by changing the name; by broadening the categories of individuals covered by the system to include "family members of employees of U.S. foreign affairs agencies covered by the Foreign Service Act of 1980 and their sponsors" rather than "specifically family members of Department of State, Agency for International Development, and International Communications Agency personnel"; by expanding the categories of records in the system to encompass more extensive biographic data on the family members, in addition to specific data regarding the employed sponsor; by adding the most recent authority; by extending retrievability to include all data items within the system; by including the computer system manager; and by limiting the record source categories to the individual family member and the sponsor's Official Personnel File. The purpose of these alterations is to revitalize and streamline the family member employment program and to facilitate direct communication with spouses through the utilization of an automated system which interfaces with the personnel systems of the foreign affairs agencies. Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, N.W., Washington, D.C. 20520. The Department intends to implement the new system sixty days after publication of this notice. The altered system, the "Family Liaison Office Central Data Bank of Family Member Skills and Direct Communication Network Records," will read as set forth below.

Dated: April 21, 1986.

For the Secretary of State.

Donald J. Bouchard,

Assistant Secretary for Administration.

State–49

System name: Family Liaison Office Centralized Data Bank of Family Member Skills and Direct Communication Network Records.

Security classification: Unclassified.

System location: Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

Categories of individuals covered by the system: Family members of employees of U.S. foreign affairs agencies covered by the Foreign Service Act of 1980 and their sponsors.

Categories of records in the system: Family member's name, Social Security Account Number, country of birth, citizenship, level and date of security clearance, GS/FS rating code, work preference code, current mailing address, location code of assignment, and other biographic data including educational background, language skills, specialized training, area of expertise, and work experience; sponsor's name, Social Security Account Number, transfer eligibility date, and foreign affairs agency name and code.

Authority for maintenance of the system: 22 U.S.C. 2693 and 4026.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The Family Liaison Office will use this record system to assist family members of employees of U.S. foreign affairs agencies in acquiring employment and other services. Information from this system will be made available to personnel offices of other Government agencies having employment opportunities. Information may also be disclosed to multinational corporations, international organizations, business firms, foundations, foreign governments, and families at overseas posts who are interested in hiring family members to perform a task commensurate with their work experience or to utilize their services in performing voluntary work.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Hard copy, computer media.

Retrievability: By individual name of family member or sponsors, as well as by each of the data items listed as a category in this description.

Safeguards: All employees of the Department of State have undergone a background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular ad hoc monitoring of computer usage.

Retention and disposal: These records will be maintained in the system for as long as the individual is interested in participating in the employment services and/or the Direct Communication Network provided by the Family Liaison Office. More specific information may be obtained by writing to Director, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

System manager(s) and address: Director, Family Liaison Office, and Chief, Personnel Management, Operating Systems Division, Department of State, 2201 C Street, N.W., Washington, D.C. 20520.

Notification procedure: Individuals who have reason to believe that the FLO Centralized Data Bank of Family Member Skills and Direct Communication Network Records might contain records pertaining to them should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, N.W. Washington, D.C. 20520. The individual must specify that she/he wishes the records of the FLO Centralized Data Bank of Family Member Skills and Direct Communication Network to be checked. At a minimum, the individual must include: date and place of birth; current mailing address and zip code; signature.

Record access procedures: Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

Contesting record procedures: (See above).

Record source categories: The individual family member for all data

elements with the exception of the current mailing address, location code of assignment, and sponsors's transfer eligibility date, all of which will be transferred automatically from the sponsor's Official Personnel File.

Systems exempted from certain provisions of the Act: None.

[FR Doc. 86-9891 Filed 5-1-86; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Monterey Peninsula Airport; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces formal receipt of the proposed Monterey Peninsula Airport (MRY) noise compatibility program under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. The proposed MRY noise compatibility program was submitted to the Western-Pacific Regional Director on January 15, 1986, for review and approval under Part 150 in conjunction with noise exposure maps which were found acceptable by the FAA on March 26, 1986. This program will be approved or disapproved by the Administrator on or before October 3, 1986.

EFFECTIVE DATE: The effective date of the start of the formal 180-day review period for the MRY noise compatibility program is April 7, 1986.

FOR FURTHER INFORMATION CONTACT: L. Yvonne Gibson, Airport Planner, AWP-611.5, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1621.

SUPPLEMENTAL INFORMATION: An airport operator who has submitted noise exposure maps that are accepted by FAA as meeting the criteria published in Part 150 may also submit a noise compatibility program for FAA approval. The program must set forth the measures the airport operator has taken or proposes to take for the reduction of existing noncompatibility land uses and for the prevention of the introduction of additional noncompatible uses.

Monterey Peninsula Airport (MRY) submitted to the FAA on January 15, 1986, a proposed noise compatibility program conducted at MRY from October 10, 1984, to January 8, 1986. It was requested that the FAA approve the submittal to be implemented jointly by the airport, the airport users and the surrounding communities, as a noise compatibility program under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979.

Upon the March 26, 1986, acceptance of the MRY noise exposure maps and completion of the preliminary review of the submitted materials for a noise compatibility program, the FAA has formally received the noise compatibility program for MRY. Preliminary review indicates that the submittal conforms to the requirements of Part 150 for noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program by the Administrator. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 3, 1986.

The proposed program includes recommended measures relating to flight procedures for noise control purposes which are exempt from the 180-day review procedures. The FAA's detailed evaluation of these measures will be conducted under the provisions of Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, and are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Because the FAA may approve a proposed noise compatibility program in less than 180 days, no formal comment period has been established. Comments received subsequent to FAA approval or disapproval, even if received beyond the 180-day limit, will be acknowledged and considered in evaluating project applications to implement elements of the program. Copies of the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Indepedence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California 90261.

Mr. O.N. Ford, District Manager, Monterey Peninsula Airport District, P.O. Box 550, Monterey, CA 93940.

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT:"**

Issued in Hawthorne, California, on April 22, 1986.

B. Keith Potts,

Acting Director.

[FR Doc. 86-9826 Filed 5-1-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance, Tioga Centeral Rail Excusion, et al.

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The indiviual poetitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 18, 1986 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hour (9 a.m.-5 p.m.) in Room 8201 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Tioga Central Rail Excursion

(Waiver Petition Docket Number RSGM–86–5)

The Tioga Central Rail Excusion (TCRX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive, Number 14. The locomotive operates on approximately 15 miles of track located in an entirely rural area between Owego, New York, and Harford, New York. The TCRX feels that compliance with FRA safety glazing requirements is unnecessary due to the area of operation.

Chicago, West Pullman and Southern Railroad Company

(Waiver Petition Docket Number RSGM–86–6)

The Chicago, West Pullman and Southern Railroad Company (CWP) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives and one caboose. The CWP operates a switching service on approximately 31 miles of track within and between various commercial facilities in the Chicago area. The petitioner states that they have not encountered any acts of vandalism concerning this equipment and feels that compliance with FRA safety glazing requirements is not necessary.

Southern Pacific Transportation Company

(Waiver Petition Docket Number RSGM–86–7)

The Southern Pacific Transportation Company (SP) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for approximately 385 locomotives. The SP indicates that the glazing in these locomotives meets the requirements of 49 CFR Part 223 with the exception of proper permanent marking of each piece of glazing material. The petitioner states that efforts to mark the glazing with adhesive back stickers has proved ineffective and alternate methods such as acid itching have been rejected due to potential safety hazards.

The railroad is, therefore, seeking a waiver of compliance of Part 223, Appendix A.16.C(1), (2), and (3) covering marking of glazing material.

Falls Creek Railroad Company

(Waiver Petition Docket Number RSGM–86–8)

The Falls Creek Railroad Company (FCRK) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate on approximately 4 miles of track in a rural area between Falls Creek, Pennsylvania, and Brockway, Pennsylvania. The railroad runs on an average of two days a month and states that they have never had any accidents or acts of vandalism. The petitioner, therefore, feels that compliance with FRA safety glazing requirements is unnecessary.

Grafton and Upton Railroad Company

(Waiver Petition Docket Number RSGM–86–9)

The Grafton and Upton Railroad Company (GU) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive, owned by the Northern Equipment Company, will operate on approximately 15 miles of GU track located in a rural and lightly populated area near Worchester, Massachusetts. The GU states that during the past 25 years there have not been any incidents of vandalism involving broken window glazing from objects thrown at locomotives from either the right-of-way or the yards. The petitioner, therefore, feels that compliance with FRA safety glazing requirements is unnecessary.

Issued in Washington, DC, on April 24, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–9845 Filed 5–1–86; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on May 20, 1986, in Washington, DC. The meeting will be held at the DOT Headquarters Building from 8:30 a.m. to 4:00 p.m. in room 4234. Issues to be discussed are: An update of the recent activities of the NDR; the proposed implementation of a "National Commercial Motor Vehicle Operator's License", and discussions with Problem Driver Pointer System and Rapid Response System Pilot State Representatives.

The meeting is open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–426–2870.

Issued in Washington, DC on: April 29, 1986.

Carole S. Guzzetta,

Director, Executive Secretariat.

[FR Doc. 86–9869 Filed 5–1–86; 8:45am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Income Taxes; 1987 Electronic Filing Test; Forms 1040, 1040A and 1040EZ Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic filing test.

SUMMARY: The Internal Revenue Service plans to broaden electronic filing of individual income tax returns in 1987. Under this approach, qualified returns preparers will be permitted to electronically transmit tax year 1986 individual income tax returns to the IRS on behalf of their clients. Under the 1987 program, most of the commonly-used forms and schedules will be accepted; electronic returns can be filed from seven metropolitan areas; and taxpayers filing in three of those areas can elect to have their refunds directly deposited in their bank, savings and loan or credit union account. Firms which prepare returns in one or more of the seven designated metropolitan areas and are interested in participating in the 1987 pilot, and other interested parties, should contact the Service to request detailed specifications.

DATE: Expressions of interest and requests for copies of specifications should be submitted by June 30, 1986.

ADDRESS: Assistant Commission (Planning, Finance and Research), Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 (Attn: Electronic Filing

Project). Telephone 202–566–7541 (not a toll-free number).

SUPPLEMENTARY INFORMATION In 1987, Forms 1040EZ, 1040A and 1040 can be filed electronically. Forms 1040 can include Schedules A, B, C, D, E, G, R, SE and W, and Forms 2106, 2119, 2441, 3468, 3903, 4562, 6251, 6252 and 8283. The seven metropolitan areas to be included in the 1987 test are Albany-Schenectady-Troy, New York; Sacramento, California; Milwaukee, Wisconsin; Norfolk-Virginia Beach-Newport News, Virginia; Phoenix, Arizona; Raleigh-Durham-Fayetteville, North Carolina and Cincinnati, Ohio. In addition taxpayers filing in the latter three areas will be permitted to elect to have their refunds directly deposited into their bank, savings and loan or credit union accounts.

The principal advantage of electronic filing are (1) Most taxpayers will receive refunds two or three weeks faster than if their returns had been filed in the form of paper documents, (2) returns preparers will be able to serve their clients more efficiently, (3) the cost to IRS of processing, storing and retrieving these returns will be reduced substantially, and (4) taxpayers participating in direct deposit will obtain their refunds quickly and more conveniently.

A participating electronic filer must meet the following basic qualifications:

1. Prepared at least 100 tax returns for compensation in 1985,

2. used computers to prepare individual income tax returns for tax years 1984 and 1985, either directly or through a service bureau,

3. has substantial communication experience under IBM 3780 RJE bi-synchronous protocol at 4800 BAUD through a dial-up modem, or associated with another firm which has such experience, and

4. has a tax preparation office in one or more of the designated metropolitan areas included in the 1987 pilot.

Electronic preparation offices must be located within the following areas:

Areas	Counties/cities included
Cincinnati/Dayton/ Springfield Ohio.	Counties of Adams, Brown, Butler, Clark, Clermont, Clinton, Fayette, Greene, Hamilton, Highland, Miami, Montgomery, Preble and Warren in Ohio.
	Counties of Boone, Campbell and Kenton in Kentucky. Dearborn County in Indiana.
Phoenix, Arizona	Maricopa County.
Raleigh/Durham/ Fayetteville.	Counties of Chatham, Cumberland, Durham, Franklin, Harnett, Johnston, Lee, Orange, and Wake in North Carolina.
Albany/Schenectady/ Troy.	Counties of Albany, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Warren and Washington.
Milwaukee, Wisconsin	Counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha.
Sacramento/Stockton, California.	Counties of El Dorado, Placer, Sacramento, San Joaquin, Sutter, Yolo, and Yuba.
Norfolk/Virginia Beach/ Newport News, Virginia.	Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Poquoson, Suffolk, Virginia Beach and York County.

While there is no geographic restriction on the taxpayers participating in electronic filing, preparers may not actively solicit business outside of the designated areas.

John L. Wedick, Jr.,

Assistant Commissioner, (Planning, Finance and Research).

[FR Doc. 86–9950 Filed 5–1–86; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 85
Friday, May 2, 1986

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, May 12, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Discussion of Subpoena Determinations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: April 30, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued April 30, 1986.

[FR Doc. 86–10008 Filed 4–30–86; 8:45 am]

BILLING CODE 6750–06–M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 7, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3207. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–9977 Filed 4–30–86; 9:58 am]

BILLING CODE 6210–01–M

3

FOREIGN CLAIMS SETTLEMENT COMMISSION

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504, and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Monday, May 19, 1986 at 10:30 a.m.

SUBJECT MATTER: Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, NW., Washington DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign, Claims Settlement Commission, 1111–20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on April 30, 1986

Judith H. Lock,

Administrative Officer.

[FR Doc. 86–10022 Filed 4–30–86; 3:35 pm]

BILLING CODE 4410–01–M

federal register

Friday
May 2, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 264, 265, and 270
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure, Post-Closure and Financial Responsibility Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 270

[SWH-FRL 2891-9]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 19, 1985, the Environmental Protection Agency (EPA) proposed to amend portions of the closure and post-closure care and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) (50 *FR* 11068). EPA is today promulgating the amendments in final form. Many of the amendments conform to a settlement agreement signed by EPA and petitioners in *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency*, renamed *Atlantic Cement Company Incorporated* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1387 and Consolidated Cases). The remainder of the amendments are designed to clarify the regulations and to address issues that have arisen as EPA has implemented the regulations.

DATES: These regulations shall become effective on October 29, 1986, except for § 270.14(b)(14), which shall be effective on May 2, 1986.

Wording changes for financial instruments issued before the effective date of these regulations must be made at the same time changes are required under §§ 264.142(b), 264.144(b), 265.142(b), and 265.144(b).

ADDRESSES: The public docket for this rulemaking is available for public inspection at Room S-212-E, U.S. EPA, 401 M Street SW., Washington, DC. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F-86-FCPC. Call (202) 475-9327 to make an appointment with the docket clerk. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll free at (800) 424-9346 or in Washington at (202) 382-3000; or Nancy D. McLaughlin, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-6677.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. Subtitle C of the Resource Conservation and Recovery Act (RCRA)

Subtitle C of RCRA creates a "cradle-to-grave" management system to ensure that hazardous wastes are transported, treated, stored, and disposed of in a manner that ensures the protection of human health and the environment. Section 3004 of Subtitle C requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications.

Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit that implements the Section 3004 standards. Recognizing, however, that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim status does not relieve a facility owner or operator of complying with Section 3004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards.

B. Regulations Affected by Today's Amendments

EPA has issued several sets of regulations to implement the various sections of Subtitle C. Part 260 of 40 CFR, among other provisions, includes definitions that apply to all other parts of the regulations. Part 264 provides standards for owners and operators of TSDFs that have been issued RCRA permits. Part 265 provides interim status standards for owners and operators of TSDFs Part 270 establishes permitting procedures for TSDFs. These four parts are amended by today's final rule.

C. Atlantic Cement Company, Incorporated (ACCI) Litigation and Settlement

Shortly after EPA promulgated the January 12, 1981 regulations, which, among other requirements, included standards for closure and post-closure care and financial assurance, individual companies and industry trade associations filed 17 separate lawsuits challenging those standards. These cases were consolidated as *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81–1387 and Consolidated Cases). On August 16, 1984, the parties (with the exception of several parties who voluntarily dismissed their lawsuits) filed a settlement agreement with the Court. The American Iron and Steel Institute voluntarily dismissed its lawsuit rather than join in the settlement; the case has been renamed *Atlantic Cement Company Incorporated* v. *U.S. Environmental Protection Agency* ("ACCI Litigation").

Under the terms of the settlement agreement, EPA agreed to propose and take final action upon certain amendments to the closure and post-closure regulations that were promulgated on January 12, 1981. The rules proposed on March 19, 1985 contained amendments conforming to the *ACCI* settlement agreement. Among the regulations EPA is promulgating today are amendments to 40 CFR Parts 260, 264, 265, and 270 that are in most cases consistent with the *ACCI* settlement agreement. In addition, certain of these amendments require conforming amendments to financial responsibility regulations in Subpart H of Parts 264 and 265. Those changes are also being made today.

D. Subparts G and H Implementation Experience

Since January 12, 1981, EPA and authorized states have developed considerable experience with the implementation of Subparts G and H. Based on this implementation experience, EPA is today making additional changes to 40 CFR Parts 260, 264, 265, and 270.

E. Hazardous and Solid Waste Amendments of 1984 Codification Rule

On July 15, 1985, EPA published in 50 *FR* 28702 final rules implementing provisions included in the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter referred to as the "codification rule"). Some of today's final rules have been promulgated to conform to HSWA and to the requirements of the July 15, 1985 codification rule.

II. Analysis of Rules

The following sections of this preamble include discussions of the major issues and summaries of the comments received in response to the March 19, 1985 proposed rule, as well as explanations of EPA's rationale for promulgating the final rules. The preamble is arranged in a section-by-section sequence for ease of reference. Because many of the regulatory amendments to Interim Status Standards (Part 265) are parallel to the Standards for Permitted Facilities (Part 264), only those changes to the Part 265 Interim Status Standards that differ from the Part 264 standards are addressed separately.

A. Definitions (Part 260)

1. Active Life of the Facility (§ 260.10).

In the March 19, 1985 proposed rule, the Agency proposed to redefine "active life" to extend the period from the initial receipt of hazardous wastes until the Regional Administrator receives certification of final closure. Sections 264.112(b) and 265.112(b) previously defined active life of a facility as that period during which wastes are periodically received.

The key concern raised by the commenters was that certain requirements applicable to operating facilities may not be practical or feasible to conduct during the closure period (e.g., inspections, paperwork requirements).

The Agency does not agree that defining the closure period as part of the active life would be burdensome or require activities not otherwise required at the facility. For example, §§ 264.73 and 265.73 now require that the owner or operator maintain the operating record until closure of the facility. The Agency would also expect an owner or operator to conduct inspections as part of a routine closure activities. As discussed in the preamble to the proposed rule, the Agency is primarily concerned with ensuring that all monitoring activities are continued until closure is completed. Therefore, the Agency is promulgating the definition of active life of the facility as proposed.

2. Final Closure (§ 260.10)

In order to clarify the distinction between partial closure and final closure, the Agency proposed to define final closure as closure of all hazardous waste management units at a facility not otherwise covered by the provisions of

§ 262.34 (exemptions from Subpart G requirements for facilities accumulating hazardous wastes for less than 90 days), in accordance with Subpart G requirements. Closure of the last unit of the facility would be defined as final closure of the facility. No comments were received on this proposal, and the Agency is promulgating the definition as proposed.

3. Hazardous Waste Management Unit (§ 260.10)

The Agency proposed to define a new term—"hazardous waste management unit"—as the smallest area of land on or in which hazardous waste is placed, or the smallest structure on or in which hazardous waste is placed, that isolates hazardous waste within a facility. The proposed definition was designed to be consistent with the preamble to the July 26, 1982 land disposal regulations (47 *FR* 32289), expanded to include storage and treatment tanks and container storage units. The following were defined as hazardous waste management units in the March 19, 1985 proposed rule: a landfill cell, surface impoundment, waste pile, land treatment area, incinerator, tank system (i.e., individual tank and its associated piping and underlying containment system), and a container storage area (i.e., the containers and the land or pad on which they are placed).

A number of commenters were concerned that the proposed definition was still somewhat ambiguous. In particular, the definition did not adequately distinguish between landfill cells, which were defined in the proposed rule as units, and subcells, which are integral subsections of cells and should not be closed separately from the cell as a whole. Another commenter expressed concern that the term "isolates" in the definition implies that all units necessarily isolate wastes, which may not always be the case (e.g., land treatment area).

The Agency agrees that the proposed definition is somewhat ambiguous and not completely consistent with the definition of unit included in the July 26, 1982 preamble. Moreover, the Agency wishes to make the definition consistent with the codification rule. (See 50 *FR* 28706 and 28712, July 15, 1985). Therefore, today's rule defines hazardous waste management unit as a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Units include: surface impoundments, waste piles, landfill cells, incinerators, land treatment areas, tanks and their associated piping and underlying containment systems, and container storage areas (i.e., the container and any underlying pad). As discussed in the preamble to the proposed rule, the Agency does not consider each container to be a unit.

4. Partial Closure (§ 260.10).

The March 19, 1985 proposed rule redefined partial closure as closure of a hazardous waste management unit. Partial closures may involve: (1) closing a hazardous waste management unit while another hazardous waste management unit at the facility continues operating (e.g., a surface impoundment or container storage area is closed but a landfill continues to operate), or (2) closing one or more hazardous waste management units while other units associated with the same process remain operational (e.g., one landfill cell of a ten-cell landfill is closed, one tank and its underlying piping is removed from a tank farm). Closure of the *last* hazardous waste management unit at the facility would be considered a *final* closure rather than a partial closure.

The Agency received no substantive comments on the proposed definition of partial closure. The definition is being adopted substantially as proposed, with the following change: In the list of examples, "tank system" has been changed to "tank (including its associated piping and underlying containment system)".

B. Standards for Permitted Facilities (Part 264) and Conforming Changes to Interim Status Standards (Part 265)

1. Closure and Post-Closure Care (Subpart G).

a. *Closure performance standard (§§ 264.111 and 265.111).* The previous sections 264.111 and 265.111 established general closure performance standards applicable to all TSDFs that specified that a facility must be closed in a manner that (1) minimizes the need for further maintenance, and (2) controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous wastes, hazardous waste constituents, leachate, contaminated rainfall, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere. The language in § 265.111 differed slightly and specified that the facility must be closed in a manner "that . . . controls, minimizes or eliminates, to the extent necessary to *protect* human health and the environment. . . ."

In the March 19, 1985 preamble, the Agency proposed to (1) incorporate into the general standard a reference to the process-specific closure standards included in 40 CFR §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and the parallel interim status provisions; (2) make the language in § 265.111 parallel to that in § 264.111; (3) revise the language to require that hazardous constituents, as well as hazardous waste constituents, be appropriately managed at closure; and (4) make a minor change to the wording of the regulation for purposes of clarification.

The Agency proposed to incorporate reference to the specific technical closure requirements into the performance standard to ensure that owners or operators of TSDFs comply with both the general performance standard and the applicable process-specific standards. No comments were submitted on this proposal. The Agency is promulgating the language of §§ 264.111(c) and 265.111(c) substantially as proposed. The reference to § 265.178 in § 265.111(c) has been dropped because there are no process-specific standards for container storage facilities in interim status; in addition, references to §§ 265.381 and 265.404 which had been inadvertently omitted from the proposed rule, are inlcuded in § 265.111(c).

Because the Agency believes that for clarity and consistency the closure performance standard for interim status and permitted facilities should be parallel, the Agency proposed to amend § 265.111(b) to make the language parallel to that in § 264.111(b). One commenter stated that the use of the phrase "prevent threats" could require an owner or operator to conduct closure activities that were not cost-effective and should be replaced by a site-specific risk assessment.

The Agency believes that the environmental goals of closure should be the same for both interim status and permitted facilities. Although the previous language of the closure performance standard in Parts 264 and 265 differed slightly, as discussed in the preamble to the proposed rule, the Agency interpreted them as having the same meaning. As a result, the Agency proposed to amend § 265.111 to be consistent with the Part 264 standards and included the language "to prevent threats".

For the sake of clarity and to be consistent with the statutory language in RCRA mandating EPA to promulgate standards to *protect* human health and the environment, however, the final rule

amends the language of § 264.111(b) to be consistent with the wording of § 265.111(b). The language in § 264.111(b) now specifies that the facility must be closed in a manner "that . . . controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment" the post-closure escape of hazardous wastes, hazardous constituents, etc.

The Agency also proposed to expand the language in §§ 264.111(b) and 265.111(b) to require that closure must control, minimize or eliminate, to the extent necessary, the post-closure escape of *hazardous constituents* instead of only hazardous waste constituents as the previous regulation required. One commenter opposed the proposal on the grounds that requiring owners and operators to address all Appendix VIII constituents rather than only hazardous waste constituents could have costly implications for closure and post-closure care. Moreover, the commenter argued that the Agency did not provide a rationale for this change in the March 19, 1985 proposed rule.

The Agency believes it is necessary to include hazardous constituents in the closure performance standard to ensure that *all* contamination is adequately addressed at closure. Furthermore, this change is consistent with the HSWA. For example, RCRA Section 3004(u) requires corrective action for all releases of hazardous wastes or *hazardous constituents* from any solid waste management unit. Similarly, Section 3001(f) requires the Agency in evaluating delisting petitions to consider, among other things, constituents other than those for which the waste was listed as hazardous. As a result of these considerations, the Agency is adopting §§ 264.111(b) and 265.111(b) as proposed.

Finally, the Agency proposed to clarify the wording in §§ 264.111(b) and 265.111(b) by replacing the phrase "contaminated rainfall" with "contaminated run-off." No comments were received and this change is being promulgated as proposed. In addition, the phrase "waste decomposition products" was changed to "*hazardous* waste decomposition products." Wastes which are not hazardous are not subject to the closure performance standards.

b. *Requirement to furnish closure and post-closure plans to the Regional Administrator (§§ 264.112(a), 264.118(c), 265.112(a), 265.118(b)).* Sections 264.112(a), 264.118(a), 265.112(a), and 265.118(a) previously required the owner or operator of a TSDF to keep a copy of the closure and post-closure plan and all revisions at the facility until closure is completed and certified. (In the case of permitted facilities and interim status facilities with approved plans, the approved plans were to be kept on-site.) Post-closure plans were to be retained at the facility until the post-closure care period began. Petitioners in the *ACCI* litigation argued that a hazardous waste management facility may not be properly equipped to maintain files at the facility and safeguard closure and post-closure plans and that the plans could be kept more efficiently and safely at nearby offices of the owner or operator of the facility. The EPA, however, was concerned that the plans be available on-site to an inspector on the day of inspection.

The Agency proposed to drop the requirement that the closure and post-closure plans be kept at the facility, but to require that they be furnished to the Regional Administrator upon request, including request by mail, and during site inspections, on the day of inspection. This was consistent with the terms of the *ACCI* settlement.

Most of the commenters focused on the applicability of the requirements to permitted facilities, arguing that if the Agency already has a copy of the plan on file, requiring it to be made available on the day of inspection is unnecessary. Another argued that plans should be kept at the facility during the closure period to make them readily available for an unannounced inspection at that time.

The Agency agrees with those commenters who argued that for facilities with approved closure and post-closure plans on file, it is not necessary to make them available on the day of inspection. For interim status facilities, however, the plans may not have been reviewed and it is important that they be available on the day of inspection. Even in the case of unannounced inspections, it should be possible to deliver a copy of the plan to the facility within the same day. Therefore, the Agency is promulgating §§ 264.112(a) and 264.118(c) to require that the plans be furnished only upon request, including request by mail; §§ 265.112(a) and 265.118(b) require that for interim status facilities with *approved* closure and post-closure plans, the plans must be furnished upon request, including request by mail. For facilities without approved plans, the plans must also be provided during site inspections.

Under the requirements of §§ 264.228 and 264.258, an owner or operator of a surface impoundment or waste pile not designed in accordance with the specified liner design standards must prepare a contingent closure and post-closure plan for closure as a landfill. To ensure that such owners and operators recognize that these contingent plans are subject to the requirements of Part 264 Subpart G, the final rule modifies the proposed rule slightly. The final rule clarifies that if a facility is required to have a contingent closure and post-closure plan under § 264.228 or § 264.258, these plans are also subject to the requirements of §§ 264.112 and 264.118.

In some cases, owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent closure and post-closure plans may be required to close their units or facilities as landfills. To clarify that these facilities also must have post-closure plans, the final rule specifies in §§ 264.118(a) and 265.118(a) that an owner or operator must prepare a post-closure plan within 90 days of the date that the owner or operator or Regional Administrator determines that the facility must be closed as a landfill.

c. *Clarification of contents of closure plan (§§ 264.112(b), 265.112(b)).* The Agency proposed a number of changes to §§ 264.112(a) and 265.112(a) to make explicit the level of detail that must be included in the closure plan to eliminate potential ambiguities in the closure plan requirements. First, the proposed rule clarified that the plan must address explicitly the activities to be conducted at all partial closures as well as final closure. The proposed rule also stated in §§ 264.112(b)(6) and 265.112(b)(6) that a schedule for closure activities must be provided for closure of each unit as well as for final closure. In addition, the proposed rule also elaborated on the types of information that should be included in the plan.

For example, the owner or operator must include in the plan not only an estimate of the maximum inventory over the life of the facility, but also a detailed description of the procedures that will be used to handle the hazardous wastes during partial and final closure (e.g., all proposed methods for removing, transporting, treating, or disposing of hazardous wastes at partial and final closure). The plan must also address all ancillary activities necessary during the partial and final closure periods, such as ground-water monitoring, leachate collection, and run-on and run-off control, as applicable.

The Agency received a number of comments supporting increased level of detail in the plans. Most of these commenters favored including even more specificity in the closure plan regulations (e.g., criteria for "how clean is clean"). A number of commenters however, also disagreed with the

Agency's proposed amendments, arguing that the level of detail proposed in unnecessary and burdensome, especially if the plan must be changed several times to reflect future changes in technology. One commenter expressed concern that the level of detail specified, combined with the permit modification procedures required to make changes to the plan, could lock an owner or operator into an outmoded closure plan.

The Agency believes that it is necessary to require detailed closure and post-closure plans to ensure accurate cost estimates and adequate financial assurance. Implementation experience has shown that poorly detailed plans have been accompanied by inadequate cost estimates. The plans should include sufficient detail to allow a third party to conduct closure or post-closure care in accordance with the plan if the owner or operator fails to do so. Therefore, the Agency is promulgating the final rule as proposed.

The Agency disagrees with those commenters who contend that requiring a greater level of detail will force owners or operators to revise their plans frequently. The types of changes that would require a revision to the closure plan are likely to be the result of a change in facility design or routine operations (e.g., a change in the cover design, off-site vs. on-site management of wastes at closure, closure of a surface impoundment or waste pile as a landfill). These types of changes are unlikely to occur frequently. The Agency does not intend that the owner or operator should revise the plan for insignificant changes (e.g., a change in the particular off-site facility used to handle wastes at closure or the contractor used to install the final cover). The Agency also does not intend this requirement to preclude an owner or operator from revising the plan as appropriate to incorporate technological innovations or to lock owners or operators into outmoded closure plans.

A number of commenters requested that the Agency address "how clean is clean" and include this standard as part of the closure requirements. The Agency is currently developing a policy on this broad issue outside the scope of this rulemaking.

d. *Description of removal or decontamination of facility structures and soils in closure plan (§§ 264.112(b)(4), 265.112(b)(4)).* Sections 264.112(a)(3) and 265.112(a)(3) previously required owners or operators to include a description of the steps needed to decontaminate facility equipment at closure. The proposed amendment expanded this provision to require that the closure plan also must include a description of steps necessary to decontaminate or remove contaminated facility structures, containment systems, and soils in a manner that satisfies the closure performance standard. The plan must include, but not be limited to, a description of the methods for decontaminating the facility, sampling and testing procedures, and criteria to be used for evaluating contamination levels.

Because responsible owners or operators will clean up drips and spills associated with hazardous waste management activities as they occur (see, e.g., 40 CFR § 264.175), many of the activities described in the closure plan for removing or decontaminating soils should be similar to those conducted during the operating life of the facility as part of routine operations. For some types of units (e.g., tanks or container storage), soil testing may not be a routine operating activity and may not be conducted until closure. For these types of units it is especially important that the plan address how the owner or operator intends to determine the extent of soil contamination at closure. The Agency's intent is that the plan should address cleanup of the maximum extent of contamination (including contaminated soil) resulting from the facility's hazardous waste operations that the owner or operator expects to be on-site anytime over the active life of the facility.

While most commenters agreed with the proposal to address contaminated soils, some suggested clarifications. Some commenters were concerned about the ambiguity of the terms "contaminated" and "containment systems." The language might be construed to require decontamination or removal of leachate collection systems and liners. It was suggested that the regulation identify the equipment and structures subject to the decontamination requirement. Another commenter stated that the preamble to the proposed rule implied that the plan must address soil contamination from production activities, which is outside the scope of RCRA.

The Agency agrees that the plan must address soil contamination *only* from hazardous waste management operations. The Agency also does not intend this rule to require that an owner or operator remove structures otherwise required by process-specific requirements to be maintained and used after closure. For example, if an owner or operator closes a surface impoundment as a landfill, the Agency does not intend that the owner or operator remove the containment system as part of closure decontamination procedures. (Similarly, the overlying hazardous wastes are not removed when a disposal facility is closed.) The Agency believes that the language of the proposed rule can be interpreted reasonably and it is not necessary to list in the regulation every piece of equipment and facility that must be decontaminated at every type of facility. As a result, the Agency is promulgating the final rule as proposed.

e. *Requirements to estimate the expected year of closure (§§ 264.112(b)(7) and 265.112(b)(7)).* Sections 264.112(a)(4) and 265.112(a)(4) previously required each owner or operator of a TSDF to include in its written closure plan an estimate of the expected year of closure. Petitioners in the *ACCI* litigation argued that compliance with that provision was unnecessarily burdensome for owners or operators of on-site TSDFs, such as storage and treatment facilities associated with industrial processes. In the case of those facilities, the expected date of closure may not be determined by the hazardous waste management activities but by the primary industrial activity with which the facility is associated, the closure date of which, in many cases, may be difficult to predict.

The Agency was concerned that in the case of owners or operators using trust funds to provide financial assurance, an estimate of the expected year of closure is necessary to enable both the owners or operators and EPA to determine whether appropriate payments have been made into the trust fund. In addition, for interim status facilities without approved closure plans, an estimate of the year of closure is important to allow the Agency the opportunity to conduct facility inspections near the end of the facility's life and ensure that closure will be performed in a manner that will protect human health and the environment. Therefore, the Agency proposed to amend the regulation to require only those owners or operators of permitted facilities who use trust funds to establish financial assurance under § 264.143 and whose facilities are expected to close prior to expiration of their initial permit to estimate the expected year of closure. For owners or operators of interim status facilities, those without approved closure plans or those who use trust funds to demonstrate financial assurance and whose remaining operating life is less than 20 years, would be required to estimate the year of closure.

Most commenters agreed with the Agency's proposed amendment to limit the requirement to owners or operators

using trust funds; some questioned retaining the requirement for all interim status facilities without approved closure plans. Those commenters who opposed the proposal argued that it is difficult to predict closure and a date should not be required. Consistent with the discussion in the March 19, 1985 preamble, the Agency feels that a date of closure is imperative for owners or operators using trust funds and for facilities without approved plans and is promulgating the rule as proposed.

f. *Amendments to closure and post-closure plans (§§ 264.112(c), 264.118(d), 265.112(c) and 265.118(d)).* Sections 264.112(b) and 265.112(b) previously allowed an owner or operator to amend the closure plan at any time during the active life of the facility if there was a change in operating plans or facility design which affected the closure plan or if there was a change in the expected year of closure. The Agency proposed amendments to make this regulation consistent with other proposed regulatory amendments. In addition, the proposed amendments established procedures and deadlines for requesting modifications to closure and post-closure plans.

The definition of active life now includes the closure period. Therefore, the language of the previous regulation would have allowed an owner or operator to request modifications to the closure plans during the operating life of the facility through the closure period. To minimize threats to human health and the environment, the Agency considers it important to avoid undue delays in the completion of closure once activities have begun. Therefore, the Agency proposed §§ 264.112(c) and 265.112(c) allowing an owner or operator to modify the closure plans only *prior* to the notification of partial or final closure, or during closure only if unexpected events occur during the closure period that affect the closure plan (e.g., adverse weather conditions, fire, or more extensive soil contamination than anticipated resulting in the need to close the unit as a disposal unit rather than as a storage unit). Consistent with the proposed amendment to §§ 264.112(b)(7) and 265.112(b)(7), the Agency also proposed that the closure and post-closure plans must be amended if there is a change in the expected year of closure *only* for those facilities required to include an expected year of closure in the plan.

One commenter argued that allowing owners or operators to revise their closure plans during closure only to account for "unexpected events" is too restrictive and would preclude the owner or operator from changing the plan to reflect optimum closure methods identified after notification of closure. While the Agency wishes to provide flexibility to owners or operators in developing closure plans and implementing closure, it does not want to prolong the closure period unnecessarily once the unit has ceased operating and is prepared to close. Therefore, the Agency believes that changes in the plan that the owner or operator could reasonably have anticipated should be make *prior* to the beginning of closure. For example, owners or operators should have sufficient time prior to the notification of closure to revise the closure plan to reflect optimum closure methods. Therefore, the Agency believes that changes made during the closure period should be limited only to those events that the owner or operator reasonably could not have expected.

Another commenter was concerned that allowing the plan to be modified during closure *only* if *unexpected* events occur during the closure period could preclude owners or operators of surface impoundments or waste piles required to close as landfills but not otherwise required to have contingent closure plans from amending their plans. The Agency does not agree with this interpretation. The Agency believes that if the owner or operator or Regional Administrator determines *prior* to closure that the unit or facility must be closed as a landfill, this determination would qualify as a change in facility operation or design. Therefore, the owner or operator must amend the closure plan as required by §§ 264.112(c)(2)(i) and 265.112(c)(1)(i) to reflect the fact that the facility is now a disposal facility. If the determination was not foreseen prior to the time of partial or final closure, this determination could be considered an "unexpected" event requiring a modification to the closure plan as specified in §§ 264.112(c)(2)(iii) and 265.112(c)(1)(iii).

To clarify this requirement and avoid potential ambiguities, the final rule specifies in §§ 264.112(c)(3), 264.118(d)(3), 265.112(c)(2), and 265.118(d)(2) that an owner or operator of a surface impoundment or waste pile not otherwise required to prepare a contingent closure or post-closure plan, must revise the closure plan and prepare a post-closure plan following a determination that the unit or facility must be closed as a landfill.

Another commenter stated that modifications to the closure plan during the closure period should be required only if the unexpected event adversely affects human health and the environment. The Agency disagrees on the grounds that the purpose of the closure plan is to describe the activities that will be conducted at closure in the event that a third party is required to conduct closure and to serve as a basis for cost estimates for financial responsibility. In addition, because the purpose of the closure certification is to ensure that closure has been performed in accordance with the approved closure plan, the plan should be modified to reflect the activities that are performed.

In light of the above considerations, the Agency is promulgating today's final rule as proposed to require that plans be modified *prior* to the notification of closure or approval of the plans, whichever is later, or during closure if unexpected events occur during the closure period that affect the plans.

The Agency also proposed a number of procedural changes to the Parts 264 and 265 regulations for modifying closure and post-closure plans. First, the proposed §§ 264.112(c) and 264.118(e) clarified that an owner or operator of a permitted facility must use the permit modification procedures specified in Parts 124 and 270 to amend the closure or post-closure plans. Second, proposed §§ 265.112(c) and 265.118(g) required owners or operators of interim status facilities with approved plans to submit a request to the Regional Administrator to amend the plan. The proposed rule gave the Regional Administrator the discretion to provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments and/or to hold a public hearing on the amendment to the plan.

Many commenters were concerned with the procedural requirements proposed for modifying the plans. Several argued that the Part 270 permit modification requirements are too cumbersome for minor changes in the plan. Another was concerned that modifications to interim status plans should be subject to public participation and should not be left to the Regional Administrator's discretion.

The Agency agrees with many of the commenters that the minor modification procedures in Part 270 are too limited in scope. As part of a forthcoming rulemaking on permit modifications, the Agency will expand the provisions of §270.42 to identify the types of plan amendments that would be considered minor modifications.

The Agency also believes that the modification procedures for interim status facilities with approved closure

and post-closure plans should be consistent with those for permitted facilities. Therefore, the final rule specifies in §§ 265.112(c)(3) and 265.118(d)(3) that the criteria of §§ 270.41 and 270.42 must be used to determine if a change to the approved closure plan is a "major" or "minor" change. Major changes to the plans are subject to the public participation procedures of §§ 265.112(d)(4) and 265.118(f); minor changes to the plans are not subject to public participation, which is consistent with the procedures of § 270.42.

Another commenter suggested that the Agency establish deadlines for acting upon written requests to modify closure and post-closure plans, after which time, if no action had been taken, the modification would be automatically approved (the commenter suggested 60 days from the day of request). The Agency agrees that it should act expeditiously in approving or disapproving amendments to the plan. However, the Agency cannot agree that the amendment should be considered automatically approved if the Regional Administrator fails to make a determination within the allotted time frame. As a result, §§ 264.112(c), 265.112(c), 264.118(d), 265.118(d) and 265.118(g) have been revised to adopt deadlines for reviewing requests for modifications but do not provide for automatic approval of modifications when the Regional Administrator fails to meet a deadline. For permitted facilities, the Regional Administrator must comply with the procedures established in Parts 124 and 270; for interim status facilities, the deadlines of §§ 265.112(d)(4) and 265.118(f) will apply.

The proposed amendments to the Parts 264 and 265 regulations also specified deadlines for requesting closure and post-closure plan modifications, to ensure that all requests are made in a timely fashion and that the level of financial assurance is adjusted, as necessary, to reflect any approved changes. The proposed rule stated that an owner or operator of a permitted facility or an interim status facility with an approved closure or post-closure plan must submit a written request to the Regional Administrator for approval of a closure or post-closure plan modification within 60 days prior to the change in facility design or operation that resulted in a change in the plan, or within 60 days after an unexpected event has occurred that requires a change to the plans. If an unexpected event occurs during partial or final closure that will affect the closure plan, a request to modify the closure plan must be made within 30 days. As discussed above, requirements applicable to amending plans also apply to owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent plans. Consistent with these requirements, §§ 264.112(c)(3) and 265.112(c)(3) now specify that an owner or operator of a surface impoundment or waste pile not otherwise required to prepare contingent plans must submit a revised closure plan to the Regional Administrator for approval no later than 60 days after the determination is made that the unit or facility must be closed as a landfill. If the determination is made during partial or final closure, the revised plan must be submitted no later than 30 days after the determination is made. For interim status facilities without approved closure plans, owners or operators must prepare a revised closure plan and maintain it at the facility and submit it to the Regional Administrator upon request.

Owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent post-closure plans must submit them to the Regional Administrator for approval no later than 90 days after the determination that the unit or facility must be closed as a landfill. Owners or operators of interim status facilities without approved plans are not required to submit the plan.

The final rule also modifies slightly the language in the proposed rule to make explicit that under § 264.112(c)(3) and 264.118(d), the owner or operator must submit a copy of the revised plan with the written request for a permit application. Similarly, for interim status facilities with approved plans, the revised plan must be submitted to the Regional Administrator for approval.

In analyzing the procedures for modifying the closure and post-closure plans, the Agency also considered whether the Regional Administrator should be given the authority to amend the closure or post-closure plan, especially in circumstances where unexpected events require plan modifications. The Agency believes that the Regional Administrator should be granted the authority to request modifications of the plans. Modifications that are considered "major" under the criteria of §§ 270.41 and 270.42 are subject to Parts 124 and 270 requirements for permitted facilities and to the provisions of §§ 265.112 and 265.118 for interim status facilities.

Consistent with deadlines in §§ 264.112(c)(3), 264.118(d)(3), 265.112(c)(3) and 265.118(d)(3), an owner or operator must submit the modified plan no later than 60 days after the Regional Administrator's request or 30 days if the request is made during partial or final closure. These provisions are included in today's final rule in §§ 264.112(c)(4), 264.118(d)(4), 265.112(c)(4), and 265.118(d)(4).

g. *Notification of partial closure and final closure (§§ 264.112(d), 265.112(d)).* Sections 264.112(c) and 265.112(c) formerly required owners or operators of TSDFs to notify the Regional Administrator at least 180 days prior to the date they expected to begin closure. The following changes were proposed: (1) clarification that the notification requirements apply to partial closures of hazardous waste disposal units and final closure of all TSDFs; (2) modification of some deadlines for notifying the Regional Administrator of partial and final closures, and (3) definition of the "expected date of closure."

The *ACCI* petitioners were concerned that subjecting partial closures of non-land disposal facilities to notification requirements would disrupt routine business operations. The Agency wishes to encourage partial closures and at the same time ensure that partial closures are conducted in accordance with an approved plan. The Agency believes that for permitted facilities and interim status facilities with approved closure plans, it should be possible at the time of final closure to evaluate whether previous closures of non-disposal units have been in accordance with the approved plan. In the case of interim status facilities that do not have approved closure plans, the owner or operator will still be responsible for ensuring that all partial closure activities of incinerators, tanks, and container storage areas are consistent with the closure performance standard of § 265.111 and any process-specific closure standards.

Moreover, all previous partial closure activities will be subject to review when the plans are subsequently approved. For example, if at the time of final closure the Agency determines that additional soil decontamination is required at units that were previously partially closed, the owner or operator will be responsible for completing this activity. In light of these requirements, the Agency proposed to limit the notification requirement to partial closures of hazardous waste disposal units and final closure of non-disposal units. This provision is consistent with the provisions of § 265.112(e) discussed below. No comments were submitted on

this proposal and the Agency is promulgating the final rule as proposed.

The proposed rule also amended the deadlines for notification of partial closure for disposal units and final closure, in response to the concerns of petitioners in the *ACCI* litigation. The petitioners argued that the 180-day notice period is unreasonable for many types of facilities and unnecessary for the Agency's purposes (i.e., adequate time to schedule facility inspections). The Agency agreed that for facilities with approved closure plans 180 days prior notice of closure may be unnecessary. The Agency therefore proposed § 264.112(d)(1), which would require the owner or operator to notify the Regional Administrator at least 60 days prior to the date he expects to begin closure of a landfill, land treatment, surface impoundment, or waste pile unit, or final closure of a facility with these types of units. An owner or operator must notify the Regional Administrator at least 45 days prior to the date he expects to begin final closure of a facility with only an incinerator, container storage, or tank units remaining to be closed.

For interim status facilities *without* approved closure plans, the Agency proposed a 180-day notification requirement for partial closure of a landfill, land treatment facility, surface impoundment, or waste pile unit, or final closure of a facility with such units to allow sufficient time to review the plans. For interim status land disposal facilities with approved closure plans (i.e., those that received approval of the entire plan prior to a previous partial closure), the Agency proposed to reduce the notification period to 60 days to be consistent with the deadlines applicable to permitted facilities.

The Agency also proposed, consistent with the interim status deadlines in the *ACCI* settlement agreement, that an owner or operator of an interim status facility without an approved closure plan provide at least 45 days notice prior to the date he expects to begin final closure of a facility with only tanks, incinerators, or container storage areas remaining to be closed.

Several commenters objected to the changes in deadlines, arguing that the same deadlines should apply to all TSDFs. Some argued that a 45-day notice period for tanks, container storage areas, and incinerators does not allow sufficient time for public participation, while others contended that 45 or 90 days is adequate notice for all types of facilities.

The Agency considered these comments and is promulgating the deadlines as proposed. The Agency believes that review of the plans for interim status land disposal units without approved plans is likely to be complex and a 180-day notification requirement is appropriate. Although the Agency recognizes that it may not always be possible to complete the review process for interim status facilities that include only tanks, container storage, and incinerators within 45 days, the provisions of § 265.112(e) allow the owner or operator to remove all hazardous wastes and decontaminate the equipment prior to the completion of the approval process. However, the owner or operator will not be discharged from all obligations or be released from financial responsibility until the closure plan has been approved and a certification of compliance with the approved plan has been submitted.

The third proposed change clarified the definition of the "expected date of closure." The previous regulation stated in a comment to §§ 264.112(c) and 265.112(c) that the expected date of closure should be interpreted as within 30 days of receipt of the "final volume of wastes." The Agency proposed to require explicitly in §§ 264.112(d)(2) and 265.112(d)(2) that an owner or operator notify the Regional Administrator within 30 days after the date on which a hazardous waste management unit received the known final volume of hazardous waste, or, if it is likely that the unit will receive additional hazardous wastes, within one year of receipt of the most recent volume of hazardous waste. To provide flexibility to long-term storage operations, the Agency also proposed to allow an owner or operator of a tank or container storage facility the opportunity to request an extension to the one-year limit if he can demonstrate that he has the capacity to receive additional hazardous wastes and is taking all steps necessary to protect human health and the environment in the interim, including compliance with all applicable permit conditions or interim status requirements.

Several comments were submitted on the proposed requirement. Although an extension to the one-year deadline was proposed for tank and container storage facilities, some commenters felt the requirement still imposed unnecessary burdens on other types of facilities that infrequently handled hazardous wastes (e.g., a storage facility used for hazardous wastes generated as a result of a spill or for off-specification commercial products). Commenters also questioned the need for owners or operators of facilities otherwise in compliance with all applicable regulations to close if hazardous wastes have not been accepted within a year. One commenter suggested that tank and container storage units be exempt from the requirements rather than be required to request extensions to the deadlines. Another commenter was concerned that the variance provisions may discourage resource recovery by requiring owners or operators to close their facilities if additional capacity is not available at their facility and technologies are not available within the allotted deadlines.

The Agency agrees that if hazardous waste management units have the capacity to receive additional hazardous wastes and are otherwise in compliance with all operating requirements they should not necessarily be required to close if hazardous wastes have not been received within a year.

If the Agency is concerned that a particular unit or facility may pose a threat to human health and the environment, if it remains open, a number of other authorities exist to allow the Agency to force a facility to close. For example, the Agency may call in the Part B of a facility in interim status, and require that the facility close if it does not satisfy permitting criteria. Moreover, a number of land disposal facilities may be required to close in response to HSWA provisions. In addition, because the owner or operator is required to maintain financial assurance for closure until final closure has been certified, funds will be available if the owner or operator fails to cover the costs when he does close the facility. In light of these considerations, the final rule extends the variance provisions to all hazardous waste management units.

The Agency does not believe, however, that facilities should be *exempt* from the deadline requirements. To ensure that the owner or operator does not use the variance provision as a way to prolong unnecessarily the commencement of closure, the Agency is allowing the variance *only* if the facility has additional capacity available and the owner or operator demonstrates compliance with all applicable regulations. In the case of a storage facility filled to capacity but intending to employ resource recovery that is not yet on-line, the Agency would extend the one-year variance on the closure deadlines if the owner or operator could demonstrate that on-site resource recovery capacity would be available to handle these hazardous wastes. If the wastes were intended to be sent to an off-site facility that was not yet in operation, unless the owner or operator could demonstrate that the off-site services would be available within a

year, he would be required to use alternate technologies to handle the hazardous wastes to avoid prolonging the closure period unnecessarily.

h. *Removal of hazardous wastes and decontamination or dismantling of equipment (§§ 264.112(e) and 265.112(e)).* Sections 264.112 and 265.112 previously did not address whether activities such as removing hazardous waste and decontaminating or dismantling equipment could be undertaken prior to closure. The proposed amendment clarified this issue.

Petitioners in the *ACCI* litigation argued that requiring 180-day notification and, in the case of interim status facilities, requiring the completion of all closure plan approval procedures before any hazardous wastes can be removed or facility equipment can be dismantled, unreasonably interferes with routine business operations. In addition, the petitioners argued that postponing the removal of wastes for 180 days or until the approval of the closure plan, whichever is later, might be environmentally unsound.

Consistent with these two concerns, EPA proposed new subsections §§ 264.112(e) and 265.112(e) providing that nothing in §§ 264.112 or 265.112 shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure. Because the approved closure plan is part of the permit conditions, all such activities at permitted facilities, regardless of when they are undertaken, must be in accordance with the approved closure plan. In the case of interim status facilities, the activities must be in accordance with the subsequently approved closure plan.

The Agency received several comments in response to this Section. Many petitioners objected to the requirement that the removal of hazardous wastes and dismantling of equipment at interim status facilities be in accordance with the *approved* closure plan, arguing that it was contrary to the intent of the *ACCI* settlement agreement. They contended that this requirement either forced an owner or operator of an interim status facility to submit the plan for approval prior to these activities, or subjected him to *post hoc* judgments if the subsequently approved plan differed from the activities previously undertaken. Other commenters opposed allowing owners or operators of interim status facilities to remove hazardous wastes or dismantle equipment without prior approval on the grounds that the provision could be subject to abuse, resulting in potential environmental threats. Others suggested that, at a minimum, the Agency should be notified of such actions so that an inspection can be scheduled.

The Agency does not agree that requiring the removal of hazardous wastes or decontamination of equipment to be in accordance with the approved closure plan is inconsistent with the provisions of the settlement agreement. The Agency agreed with the petitioners in the *ACCI* litigation that, under the previous rules challenged by the petitioners, the owner or operator is not precluded from removing wastes and decontaminating and/or dismantling equipment at any time without providing notice to EPA and, for interim status facilities, prior to submission of a closure plan. Moreover, the Agency agreed with petitioners that it is environmentally sound to remove hazardous wastes as quickly as possible to minimize threats. As a result, the Agency agreed to make this point explicit in the regulations and proposed §§ 264.112(e) and 265.112(e).

The Agency, however, never intended nor agreed that the Agency should be precluded from ensuring that such activities meet the closure standards. The Agency believes that any such activities, like any other hazardous waste management activities, must be in accordance with the regulatory requirements established under RCRA. The Agency does not believe that this requirement will result in an undue burden on owners or operators, even for interim status facilities without approved closure plans. As long as the removal of hazardous wastes and the dismantling or decontamination of equipment conducted prior to the submission of the closure plan are consistent with the closure requirements set forth in the Part 265 regulations, these activities would be approved in the subsequent closure plan and would not render unacceptable activities previously undertaken. Activities would only be rendered unacceptable if they are inconsistent with the closure regulations.

Moreover, the Agency believes that the types of activities that would be included in removing hazardous wastes or dismantling or decontaminating equipment can easily be handled in an environmentally responsible manner that does not give rise to the need for any second-guessing by a regulatory agency. In the infrequent situations where the adequacy of such an activity may be open to serious question, prior Agency review is appropriate and the facility is encouraged to submit its closure plan for approval prior to the commencement of the activity to ensure that the activity satisfies the closure performance standard. In any event, the choice is left to the owner or operator whether to seek approval prior to conducting the activity or to proceed without Agency review and approval.

The Agency does not agree with those commenters who criticized the provision on the grounds that it may allow owners or operators undue discretion in conducting closure activities prior to notification. The language in §§ 264.112(e) and 265.112(e) explicitly limits the types of activities that can be undertaken prior to notification of the removal of hazardous wastes and decontamination/dismantling of equipment. It thus precludes the possibility that an owner or operator could conduct other types of activities that must be subject to EPA notice (e.g., cover installation).

The Agency considered whether to require explicitly in §§ 264.112(e) and 265.112(e) that documentation be prepared to support activities conducted prior to notification. The Agency decided that such a requirement is not necessary for a number of reasons. First, for hazardous wastes sent off-site, the owner or operator is required under § 262.40 to maintain copies of the manifests accompanying the shipments. Second, for wastes handled on-site, information on how it was managed must be included in the operating record as specified in §§ 264.73 and 265.73. Finally, because an independent registered professional engineer must certify that the entire facility has been closed in accordance with the approved closure plan, the owner or operator will need to provide the engineer with appropriate documentation demonstrating that all previous activities have been performed in accordance with the approved closure plan. Therefore, this section is promulgated as proposed.

i. *Time allowed for closure (§§ 264.113 and 265.113).* Sections 264.113(a) and 265.113(a) previously required the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of hazardous wastes. The Regional Administrator was authorized to extend the deadline if the owner or operator demonstrated, among other things, that there was a reasonable likelihood that a person other than the owner or operator would recommence operation of the facility, and the owner or operator had taken and would

continue to take all steps necessary to prevent threats to human health and the environment. Sections 264.113(b) and 265.113(b) required the owner or operator to complete closure activities within 180 days after receiving the final volume of wastes unless the Regional Administrator granted a longer period.

Petitioners in the *ACCI* litigation argued that the deadlines imposed by §§ 264.113 and 265.113 might preclude the *original* owner or operator from temporarily suspending operations as a result of fluctuations in the market or economic conditions. The Agency agreed with these concerns and proposed to amend §§ 264.113(a)(1)(ii)(B), 265.113(a)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to allow an owner or operator two one-year extensions to the deadlines for removing hazardous wastes and completing closure. These extensions may be granted if the owner or operator can demonstrate that the partial or final closure will take longer than 90 days (for removal of hazardous wastes) or 180 days (to complete closure) *or*: (1) the facility has the capacity to receive additional hazardous wastes; (2) there is a reasonable likelihood that the owner or operator or another person will recommence operation of the facility; (3) closure would be incompatible with continued operation of the facility; and (4) the necessary steps have been and will be taken to ensure protection of human health and the environment, including compliance with all applicable permit conditions or interim status requirements.

The proposed rule specified that requests for extensions must be made at least 30 days prior to the expiration of the 90-day period established in §§ 264.113(a) and 265.113(a) and the 180-day period established in §§ 264.113(b) and 265.113(b), or within 90 days of the effective date of the regulation, whichever is later. In addition, for interim status facilities the proposed rule stated that extensions must be granted in accordance with the procedures of § 265.112(d).

One commenter correctly noted that the proposed rule was inconsistent with the terms of the *ACCI* settlement. First, in § 265.113(a), the proposal inadvertently omitted the language in the agreement which specified that the 90-day period would be triggered by the approval of the closure plan, if that is later than the final receipt of hazardous wastes. Second, the 180-day period for completing closure was inadvertently shortened to 90 days in §265.113(b). Third, requiring owners or operators to follow the elaborate procedures in § 265.112(d) to extend the time for completion of interim status closure activities would be burdensome and contrary to the parties' intent. Fourth, the settlement did not specify the maximum length of the time extension; the proposed rule included a maximum time period of 2½ years for the completion of closure. (A number of commenters also contended that, to avoid imposing unnecessary burdens on owners or operators, no deadlines should be specified.)

The Agency is making a number of changes from the proposal that will result in a final rule that is consistent with the *ACCI* settlement language. First, the final rule includes the language inadvertently omitted from the proposed rule. The specified 90-day period in § 265.113(a) will begin only after the approval of the closure plan, if that is later than the final receipt of hazardous waste. This will ensure that a reasonable compliance period is provided after the closure requirements are fixed in an approved plan. Second, § 265.113(b) retains the previous period of 180 days to complete closure.

The Agency also agrees with some commenters that including the phrase "using the procedures of § 265.112(d)" in § 265.113 (a) and (b) would have required overly elaborate procedures for what is essentially a minor change to the closure activities. Under the provisions of § 270.42, an extension to the closure period is considered a minor modification for permitted facilities. EPA believes the requirements for interim status facilities should be consistent with the Part 264 standards. As a result, an extension of the closure period for interim status facilities is not subject to the detailed procedures of § 265.112(d).

The Agency also agrees that limiting the length of the closure period to a maximum of 2½ years may be inconsistent with the settlement provisions. Moreover, if the unit or facility has additional capacity to receive additional hazardous wastes and the owner or operator is in compliance with all applicable operating requirements, an owner or operator should not be restricted to the 2½ years for completing closure. Consistent with the discussion above for allowing variances to the expected date of closure for all types of hazardous waste management units, the Agency has a number of authorities already available to ensure that a unit or facility does not pose a threat to human health and the environment. Therefore, the final rule states that the Regional Administrator may approve an extension to the 90- or 180-day periods subject to the conditions of §§ 264.113 and 265.113.

The Agency received a number of other comments applicable to schedules for closing the facility. One commenter noted that a request to extend the closure period should be an option in the permit application. This option, however, is already available to the owner or operator under § 270.32.

Another commenter expressed concern that the requirement to request an extension to the closure period within 90 days of the effective date of the final rule would not provide adequate time to make the required demonstration. In general, the Agency believes that owners and operators should be able to anticipate the likelihood that an extension will be necessary. Moreover, the effective date of today's promulgation is six months from today which should provide more than adequate notice to owners or operators. Because the effective date is six months after promulgation, the final rule drops the provision allowing the owner or operator to request an extension within 90 days of the effective date of the regulation if that is later than the deadlines for removing all hazardous wastes upon completing closure.

In the March 19, 1985 proposed rule, the Agency also proposed to require that closure be completed within 180 days after the final receipt of *hazardous* wastes rather than after the final receipt of wastes. The change makes §§ 264.113(b) and 265.113(b) consistent with §§ 264.113(a) and 265.113(a). Paragraph (a) requires that owners or operators treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of hazardous wastes. Paragraph (b) requires that the owner or operator complete those activities within 180 days of receiving the final volume of wastes. The Agency was concerned that owners or operators might misinterpret paragraph (b) and delay compliance with the closure performance standards by ceasing to handle hazardous wastes but continuing to manage non-hazardous wastes. The change to §§ 264.113(b) and 265.113(b) is also consistent with the language in §§ 264.112(d)(2) and 265.112(d)(2). These latter sections explain that the date, when the owner or operator expects to begin closure, is no later than 30 days after the date on which a hazardous waste management unit receives the final volume of *hazardous* wastes (or under certain circumstances, one year

after receipt of the most recent volume of hazardous wastes). It is only logical that if the expected date to begin closure is after the receipt of the final volume of *hazardous* wastes, the date to complete closure would also be after the final receipt of hazardous waste.

One commenter challenged this proposed change, contending that this is inconsistent with the Congressional intent evidenced in the HSWA legislative history regarding closure of surface impoundments. The Agency disagrees with the commenter's reading of HSWA and its legislative history. HSWA contains no provisions addressing the question of whether disposal surface impoundments that cease to accept hazardous waste should be required to close or allowed to stay open to receive non-hazardous waste. HSWA merely addresses retrofitting requirements for surface impoundments by adding Section 3005(j) of RCRA, which requires interim status surface impoundments that receive, store or treat hazardous waste after November 1, 1988 to retrofit to install double liners and leachate collection systems. The legislative history contains a brief discussion that indicates that this provision does not require the closure of an impoundment that ceases to receive hazardous waste but continues to receive non-hazardous wastes, and that requiring such closure would not be proper if the management of the impoundment is protective of human health and the environment.

The legislative history of Section 3005(j) of RCRA merely evidences the fact that Section 3005(j) itself does not mandate closure of interim status surface impoundments that cease to receive hazardous waste. It leaves unimpaired EPA's pre-existing authority to establish by regulation appropriate closure requirements for interim status surface impoundments as necessary to protect human health and the environment. EPA's analysis, set forth below, concludes that the expeditious closure of hazardous waste disposal surface impoundments after they are no longer receiving hazardous waste for disposal would significantly improve protection of human health and the environment. Requiring such closure is thus consistent with Section 3005(j) of RCRA and its legislative history.

The hazardous waste regulations incorporate a two-part "prevention and care" system whose overall goal is to minimize the formation and migration of leachate to the adjacent subsurface soil, ground water, or surface water. The regulatory goal of minimizing the formation and migration of leachate is achieved through the design and operating standards that require (1) the use of a liner that is designed and installed to prevent any migration of waste out of the unit to the adjacent subsurface soil or ground water or surface water throughout the active life of the unit; (2) the installation of leachate collection and removal systems and run-on controls for waste piles and landfills, and the removal or solidification of hazardous wastes and hazardous waste residues at closure for surface impoundments; and (3) the placement of a final cover (cap) placed on top to minimize the percolation of liquids into the unit. EPA is relying principally on the final cover (cap) rather than the bottom liner to provide post-closure protection of ground water.

While the regulations contain provisions for waivers from the liner and leachate collection and removal requirements, no such waivers were allowed for the closure provisions. In addition to providing ground-water protection, the final cover also: (a) Prevents the "bathtub" effect (i.e., filling with leachate and over-flowing); (b) protects surface water from run-off; and (c) discourages direct access to the hazardous waste.

EPA guidance calls for placing final covers at closure or for landfills, preferably, as filling of the cell ends. The purpose of the cover is to minimize infiltration of rain water and the subsequent formation and migration of leachate from the unit. Because liners are intended to perform during the active life of the unit and are not expected to provide long term protection, final covers play a particularly important role in long-term protection of human health and the environment. In addition, many older units are not lined, so early placement of the final cover may be the only way to reduce leachate generation from the unit.

While some units may have liners and leachate collection systems, the expected life of these systems is limited, leachate collection systems can become clogged, and all liners will eventually leak. Therefore, the cap is critical for the long term control of the unit. In addition, while new surface impoundments are required to have leak detection systems, most existing units do not and, therefore, it is often not known whether the unit is leaking until it is detected by ground-water monitoring. Therefore, the cap should be applied to these as soon as possible to minimize infiltration.

In light of these considerations, the final rule retains the proposed requirements to require that closure be completed within 180 days of the final receipt of hazardous waste.

In the proposed rule, the Agency requested comments on the desirability of defining a "reasonable likelihood" for purposes of §§ 264.113 (a) and (b) and 265.113 (a) and (b). One commenter was concerned that the proposed language allowed too much discretion on the part of the permitting agency and the permittee, and that a more objective standard, such as a purchase agreement, should be applied. Another commenter stated that the Agency should wait to develop the "reasonable likelihood" standard until it has accumulated experience with the provision. In the absence of additional information, the Agency is not establishing standards for determining what constitutes a "reasonable likelihood."

j. *Disposal or decontamination of equipment, structures, and soils (§§ 264.114 and 265.114).* Sections 264.114 and 265.114 previously required owners and operators to dispose of or decontaminate all facility equipment and structures. The proposed rule required owners or operators to remove all contaminated soils as part of partial and final closure, as needed.

The comments made concerning these proposed changes were similar to those made on §§ 264.112(b) and 265.112(b). One commenter was concerned that the requirements could be interpreted to require that if it was not possible to remove all contaminated soil from a tank facility, the tank would have to be demolished and the facility converted into a landfill. The Agency believes that at most tank facilities it should be possible to remove all the contamination. In those cases where soil contamination is so extensive as to preclude its removal, stringent closure requirements would indeed be appropriate. HSWA clearly contemplates that contamination remaining at closure must be corrected in a manner that protects human health and the environment (e.g., Section 206 of HSWA, 3004(u) of RCRA). Therefore, the Agency is promulgating §§ 264.114 and 265.114 substantially as proposed. The final rule also clarifies that if the owner or operator removes any hazardous wastes or hazardous constituents during partial or final closure, he may become a generator subject to additional regulations.

k. *Certification of closure (§§ 264.115 and 265.115).* Sections 264.115 and 265.115 previously provided that when closure is completed, an owner or operator must submit certifications from himself and from an independent registered professional engineer that the

facility has been closed in accordance with the specifications in the approved closure plan. Petitioners in the *ACCI* litigation challenged the need for an *independent* engineer on the grounds that an in-house engineer would be in the best position to observe closure activities. As agreed to in the *ACCI* settlement, the Agency proposed to drop the requirement that the registered professional engineer be independent.

Some commenters supported the proposal to drop the "independent" requirement while others favored retaining the existing rule. The Agency has reconsidered the issue and is dropping the proposed rule to allow an in-house registered professional engineer to certify closure. Because certification of final closure is the final step in the closure process and triggers the release of the owner or operator from financial responsibility requirements for closure and the third-party liability coverage requirements of §§ 264.147 and 265.147, the Agency believes that the certification should be made by a person who is least subject to conscious or subconscious pressures to certify to the adequacy of a closure that in fact is not in accordance with the approved closure plan. The Agency's position in this regard is consistent with other types of certification programs which require certifications to be made by independent parties. For example, the Securities and Exchange Commission requires that all publicly-traded companies provide independent audits of financial information. Similarly, grants issued under the Clean Water Act must be accompanied by independent audits.

The Agency also proposed a requirement that owners and operators certify partial closures for the closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit; certification of incinerators, tanks, and container storage units could be submitted any time prior to, or at final closure. Deadlines were also proposed for submitting certifications—45 days after the completion of each partial closure, if applicable, and 30 days after final closure. Documentation supporting the certification must be furnished to the Regional Administrator upon request.

The Agency received several comments on the proposed rule to certify, as they are performed, partial closures of all units except tanks, incinerators, and container storage. Most commenters agreed that partial closures should be certified. Some supported the proposal that certification of tanks, containers, and incinerators should not be required until final closure on the grounds that this is consistent with the provisions of §§ 264.112(e) and 265.112(e), which allows an owner or operator to remove wastes or decontaminate equipment without prior notification. Moreover, unlike land disposal units, it should be easy to certify these types of units at final closure. Others, however, argued that *all* partial closures must be certified as soon as they are performed to ensure protection of human health and the environment. The Agency does not consider it necessary to certify these types of units as they are closed and, consistent with the provisions of §§ 264.112(d) and (e) and 265.112(d) and (e), the final rule does not require certification of tanks, container storage, and incinerators until final closure.

A number of commenters disagreed with the proposed deadlines for submitting certifications, arguing that no distinctions should be made between partial and final closure, and that 45 days may be too short. The Agency agrees and is amending the final rule to require certifications for partial and final closures to be submitted within 60 days of the completion of partial or final closure, as applicable.

One commenter also was concerned about the lack of a deadline for maintaining documentation supporting the independent registered professional engineer's certification. The Agency agrees and is requiring that documentation be furnished upon request to the Regional Administrator until the owner or operator is released from financial assurance requirements under §§ 264.143(i) and 265.143(h).

In the proposed rule, the Agency requested comments on three issues relating to closure certification: (1) should the regulations specify the qualifications of engineers who may certify closure; (2) what types of supporting documentation should be required for certification and should they be submitted to the Agency; and (3) should the Regional Administrator formally approve the certification.

A number of comments were submitted on these issues. Most commenters opposed specifying the type of engineer that would be qualified to certify closure, although one commenter suggested that the language in the certification should state explicitly that the engineer has the appropriate qualifications to certify closure. The Agency generally agrees with these commenters and is not specifying qualifications for engineers.

In response to the Agency's request for comments on the appropriateness of requiring that supporting documentation be submitted with the closure certification, one commenter argued that the submission of documentation was unnecessary, while another was concerned that unless the documentation was submitted, it would not be available for public review.

The Agency recognizes the concern of the commenter for ensuring that the documentation be readily available to the public for review. However, rather than requiring that all documentation be submitted, the Regional Administrator may request submission of the documentation if there is a request from the public for review or if the Regional Administrator determines that there is a need for the Agency to review it. Therefore, all interested parties will have access to documentation upon request. In addition, the Regional Administrator may request that documentation be submitted at any other time under the provisions of §§ 264.74 and 265.74.

The Agency received one comment supporting Agency approval of the certification. The Agency has considered this issue further and, in light of the burdens and costs associated with developing criteria and procedures for formally approving the certification, the Agency is not promulgating such procedures at this time. However, the Regional Administrator has the discretion under the authority of §§ 264.143(i) and 265.143(h) not to release the owner or operator from financial responsibility requirements if he has reason to believe that partial or final closure has not been in accordance with the approved closure plan.

l. *Survey plat (§§ 264.116 and 265.116).* Sections 264.119 and 265.119 required the owner or operator of a disposal facility to submit to the local zoning authority, or the authority with jurisdiction over local land use, within 90 days after closure is completed, a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. Because the survey plat must note the location and dimensions of each disposal area, it must be prepared prior to the completion of closure of that unit. Therefore, the Agency proposed to require that the survey plat be submitted to the appropriate local land use authority no later than the certification of closure of each hazardous waste disposal unit. The Agency also added a requirement that the plat must be prepared and certified by a professional land surveyor, to ensure that the surveyor is licensed by a State and can

be held legally responsible for the survey work.

One commenter questioned the applicability of the survey plat requirement to injection wells. Another challenged the need to submit a plat after each partial closure, arguing that as long as the plat is submitted prior to final closure, adequate protection will be provided. Another commenter was concerned that the deadline for filing the plat was inadequate.

The Agency agrees that the survey plat requirement is not applicable to injection wells. Injection wells are not subject to the requirements of Subparts G and H and therefore are not required to comply with the survey plat provisions (see §§ 264.1(d) and 265.430(a)).

The Agency disagrees with the argument that the plat need not be filed until final closure. First, the Agency is concerned that the local land authority should have information on closed units in a timely fashion in the event that a closed portion of a facility is sold prior to final closure. Second, since the plat must be prepared prior to the completion of the partial closure, the Agency does not consider it burdensome to require it to be submitted at that time. Therefore, the Agency is promulgating §§ 264.116 and 256.116 to require that the survey plat be filed after closure of each hazardous waste disposal unit.

The Agency agrees that the proposed 45-day deadline may not always be adequate. The proposed regulation used the certification date as the deadline for submission of the survey plat. Since the certification date has been extended from 45 days to 60 days, the deadline for filing the survey plat is now within 60 days after completion of partial or final closure. No changes were required to the proposed language of §§ 264.116 and 265.116.

m. *Post-closure care and use of property (§§ 264.117 and 265.117).* Sections 264.117(a) and 265.117(a) previously required post-closure care to continue for 30 years after the date of completing closure. In addition, the regulation allowed requests to reduce or extend the period based on cause to be submitted during the post-closure care period. The previous regulations did not specify whether the period began with closure of a single unit or of the entire facility. Because of the importance of beginning post-closure monitoring and maintenance activities as soon as a hazardous waste management unit has been closed, the Agency proposed to require that the post-closure care period for each hazardous waste management unit subject to post-closure care requirements begin after the closure of each unit.

In determining when the 30-year post-closure care period should begin, the Agency proposed that the 30-year care period apply to each unit (i.e., partial closure) rather than to the entire facility to reduce the burden on an owner or operator who partially closes units prior to closure. The Regional Administrator, however, still retained the authority under the proposed §§ 264.117 and 265.117 to extend the length of the post-closure care period as necessary to protect human health and the environment. Moreover, if the Regional Administrator extended the post-closure care period for any unit during the active life of the facility (i.e., prior to receipt of certification of final closure), the post-closure cost estimate and level of financial assurance must also be adjusted.

The Agency did not receive many comments on the proposal to trigger the beginning of the 30-year post-closure care period with partial closure. Two commenters were concerned that it would be difficult to correlate monitoring results with specific units and, as a result, the 30-year period should be triggered at final closure of the facility. The Agency agrees that at some facilities it may be difficult or impossible to differentiate monitoring results for different units. Therefore, unless the owner or operator can demonstrate that separate monitoring systems are established for each unit, the Regional Administrator may decide to extend the post-closure period for that unit to be consistent with the post-closure care period for the remainder of the units. In developing the final rule, the Agency reconsidered the provisions for requesting reductions or extensions of the post-closure period. Although the Agency believes that in many cases, sufficient data may not be available prior to the beginning of the post-closure care period to support a petition to reduce or extend the period, the Agency does not wish to impose unnecessary requirements. Therefore, §§ 264.117(a)(2), 265.117(a)(2) and 264.118(g) of the final rule allow the Regional Administrator to reduce or extend the post-closure care period based on cause at any time.

n. *Post-closure plans (§§ 264.118, and 265.118).* Sections 264.118(a) and 265.118(a) required owners or operators of hazardous waste disposal facilities to have post-closure plans. In addition, under §§ 264.228(c) and 264.258(c), storage and treatment surface impoundments and waste piles that do not meet the liner design standards are required to prepare contingent closure and post-closure plans in the event that they are closed as landfill facilities.

Because the Agency was concerned that interim status impoundments and waste piles and permitted impoundments and waste piles that meet the design standard may still be required to close as landfills, the Agency proposed in §§ 264.118(b) and 265.118(a) that *these* facilities must prepare post-closure plans if they become subject to post-closure care.

One commenter noted that for interim status surface impoundments and waste piles that do not meet the liner design standard, owners or operators should be able to anticipate prior to the time of closure that they will be unable to remove all contaminated soils, and will be required to close their facilities as landfills. Under the proposed rule, such owners or operators would not be required to prepare revised closure plans or post-closure plans until the time of closure, thus delaying the closure process. This commenter suggested that the regulations require owners and operators of interim status surface impoundments and waste piles that do not meet the design standard of §§ 264.228 and 264.258 to prepare contingent closure and post-closure plans. This would be consistent with the requirements of §§ 264.228 and 264.258 applicable to permitted facilities.

The Agency agrees that it may not be possible to remove *all* contamination at interim status surface impoundments and waste piles not designed in accordance with the liner design standards of §§ 264.228 or 264.258. Requiring that such facilities revise closure plans and prepare post-closure plans would ensure that the owners or operators have adequately planned for closure of the facility as a landfill.

However, owners and operators of interim status facilities with surface impoundments or waste piles were required to make certain certifications and submissions as specified in Section 213 of the Hazardous and Solid Waste Amendments (HSWA, the "Loss of Interim Status" provision), or the facility's interim status would be terminated. Approximately two-thirds of such facilities failed to meet those requirements, and thus had their interim status terminated. Consequently, those owners and operators were required to submit their closure plans by November 23, 1985 and begin closure. The Agency expects that most of the remaining third of these land-based facilities will continue to operate and become subject to the Part 264 standards through the permitting process.

Today's final rule specifies in §§ 265.118(a) and 264.118(a) that an owner or operator of an interim status facility with a surface impoundment or waste pile or a permitted facility with a surface impoundment or waste pile which is *not* required to prepare a contingent plan must submit a post-closure plan to the Regional Administrator for approval within 90 days of the determination that the unit must be closed as a landfill. This is consistent with the proposed rule. In addition, these facilities must submit revised closure plans in accordance with the requirements of §§ 264.112(c) and 265.112(c).

The Agency is also now clarifying in §§ 264.118(a) and 265.118(d) that owners or operators of permitted facilities must comply with all Parts 124 and 270 procedures applicable to modifying the conditions of their permit. Owners or operators of interim status facilities must submit their post-closure plans in accordance with the provisions of § 265.118(d).

The Agency also has clarified in the final rule in §§ 264.118(b) and 265.118(c) that the post-closure plan must explicitly address the post-closure care activities and the frequency of these activities applicable to each disposal unit.

o. *Post-closure notices (§§ 264.119 and 265.119).* Sections 264.119 and 265.119 previously required the owner or operator of a facility subject to post-closure care to submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the wastes disposed of within each cell or area of a land disposal facility within 90 days after final closure. Sections 264.120 and 265.120 required that a notation be filed on the deed to the property indicating its use as a disposal facility and indicating that the plat and record of wastes had been filed with the appropriate local land use authority.

The Agency proposed to (1) extend the requirements to partial closure activities; and (2) require owners or operators to request permission from the Regional Administrator if they wish to remove hazardous wastes during the post-closure care period and to remove the notice from the deed.

The Agency considers the deed notation to be an important means of ensuring that prospective and subsequent owners of the property are informed of the presence of hazardous wastes, the existence of federal restrictions on land use, and the availability of the survey plat and waste record from the local land use authority. Therefore, the Agency proposed to require that no later than 60 days after the certification of closure of each hazardous waste disposal unit, the owner or operator record the notation on the deed and submit to the Regional Administrator both the certification stating that the notation has been recorded and a copy of the recorded document. Consistent with this requirement, the Agency proposed that the record of waste also be filed with the local land authority and the Regional Administrator within 60 days after closure of each hazardous waste disposal unit.

A number of comments were received on the deadlines for submitting the record of waste to the local land authority and for filing the notices in the deed. Suggestions included: submitting notices and the record of wastes to the local land authority at final closure only; filing the notice in the deed after the first partial closure and verifying its accuracy at final closure; and filing a notice in the deed prior to transfer of ownership. One commenter expressed concern, that, in many jurisdictions, filing a notice in the deed after each partial closure may be especially burdensome because of the need to transact a dummy "sale" as a condition of filing a deed notation.

The Agency disagrees that submitting the record of hazardous waste to the local land authority and Regional Administrator within 60 days after each partial closure of a hazardous waste disposal unit would be burdensome. Under §§ 264.73 and 265.73, an owner or operator must record, as it becomes available, and maintain in the facility operating record information on the types and quantities of hazardous wastes handled at the facility and the location of hazardous waste within each disposal area. Therefore, the owner or operator would simply be required to submit a copy of readily available records to the local land authority and the Regional Administrator. In light of these considerations, the final rule retains the requirement that within 60 days after the certification of closure of each hazardous waste disposal unit the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within that disposal cell or unit.

The Agency agrees with those commenters who argued that filing a notice in the deed after closure of each hazardous waste disposal unit could impose significant burdens, especially if "dummy" sales were required, and would not be necessary to ensure that future purchasers of the land were aware of the land's prior uses. Filing a notice after the first partial closure of a hazardous waste disposal unit and verification of the accuracy of the notice after closure of the last disposal unit should adequately alert all future owners of the land's prior use. Therefore §§ 264.119(b) and 265.119(b) are revised to require that the notice in the deed, as well as the certification to Regional Administrator that the notice has been filed, be filed within 60 days after certification of closure of the first hazardous waste disposal unit. Sixty days after closure of the last disposal unit, the deed and notice to the local land authority must be amended, as necessary. It should be noted that these post-closure notice requirements do not affect the partial closure certification requirements of §§264.115 and 265.115; all partial closures of hazardous waste disposal units must be certified as they are performed.

Section 264.120(b) previously provided that if the owner or operator of a hazardous waste facility subsequently removed all hazardous wastes and waste residues, the liner (if any), and all contaminated underlying and surrounding soils, he could either remove the deed notation required by § 264.120(a), or add a notation indicating that the hazardous wastes have been removed. No similar provisions were allowed for interim status facilities.

The Agency proposed in § 264.119(c) that an owner or operator of a permitted facility must request a modification to the post-closure permit in accordance with Part 270 requirements prior to removing hazardous wastes. For interim status facilities, the proposed language of § 265.119(c) specified that if an owner or operator wishes to remove hazardous wastes, he must request the approval of the Regional Administrator prior to the removal of the hazardous wastes to amend the approved post-closure plan. In addition, the owner or operator must demonstrate compliance with the criteria in §§ 264.117(c) and 265.117(c) for post-closure use of property. Moreover, because the owner or operator would be conducting hazardous waste management activities, he must comply with all applicable generator requirements and with all post-closure permit conditions, if applicable.

One commenter suggested that a subsequent owner or operator who wishes to remove hazardous wastes should notify the previous owner or operator as well as the generators of the wastes in order to alert them of activities of the facility which could subsequently result in future Superfund

liabilities. The Agency has refrained from adopting this approach because it is not relevant to the standards in Section 3004 of RCRA of protecting human health and the environment.

Finally, the proposed rule required the owner or operator to seek Regional Administrator approval before deleting the deed notation or placing a new notation in the deed regarding removal of the wastes. One commenter argued that this requirement could delay future sales of TSDFs. Because the Agency wishes to ensure that all hazardous wastes have been adequately removed prior to removal of the notice to the deed, the Agency is promulgating the rule as proposed.

In the preamble to the proposed rule, the Agency requested comments on notifying parties with rights-of-way on property used to dispose of hazardous wastes of its prior use. One commenter suggested that TSDF owners or operators should be responsible for notifying such parties, including parties with subsurface rights. While the Agency agrees that it is important to ensure that all interested parties are aware of the prior uses of land used to dispose of hazardous wastes, it does not want to impose unnecessary burdens on owners or operators. The Agency therefore investigated whether state laws currently requires notice to the holders of rights-of-way, easements, or subsurface rights of changes to the land by the owner that could affect their interests or safety.

It appears that in most States there is no duty to inform, but there is a duty not to take actions that render the exercise of the right unreasonable or burdensome. Private rules of property and tort, however, will vary concerning notice. In addition, it is likely that the facility will be subject to security measures as specified by §§ 264.117(b) and §§ 265.117(b) and that these security measures will provide notice to parties who have rights-of-way on land used to dispose of hazardous wastes or subsurface rights on the land. Therefore, the Agency is continuing to analyze options for ensuring that all parties are provided adequate notice of hazardous waste disposal activities. This does not, however, relieve the owner or operator of potential liabilities with respect to such parties.

p. *Certification of completion of post-closure care (§§ 264.120 and 265.120).* The previous regulations did not require that the owner or operator certify that post-closure care activities have been conducted in accordance with the approved post-closure plan. Because of the importance of ensuring that post-closure care has been conducted properly prior to releasing the owner or operator from these obligations (including post-closure care financial responsibility), the Agency proposed that an owner or operator submit to the Regional Administrator within 30 days after completing the established post-closure care period for each disposal unit, a certification signed by him stating that all post-closure care activities have been conducted in accordance with the approved post-closure plan. The Agency also requested comments on the desirability of requiring post-closure certifications on an annual or periodic basis (e.g., every five years) rather than only at the end of the 30-year post-closure care period.

Some commenters questioned the need for any post-closure care certification, arguing that the information provided would duplicate data already available to the Agency (e.g., monitoring results Agency inspection reports). Most of the commenters focused on the appropriate frequency of these certifications. Suggestions included: once at the end of the post-closure care period associated with each unit; every five years; and annually. One commenter requested that an extension to the 30-day period for submitting certifications be provided. Finally, it was suggested that the certification be performed by an independent registered professional engineer consistent with the closure certification.

The Agency remains convinced that certification of post-closure care is necessary both to ensure that the post-closure care activities are conducted in accordance with the approved plan, and to trigger the release of the owner or operator from financial assurance obligations under §§ 264.145(i) and 265.145(h). The Agency agrees with some commenters that annual or periodic certifications may not be necessary and thus is requiring that the the certification be submitted at the end of the post-closure care period of each unit. The Agency is also extending the deadline for submitting the certification to 60 days after the completion of the established post-closure care period for each unit. In developing the final rule, the Agency made two other changes to the proposed rule. First, the Agency added a requirement that the certification be submitted by registered mail, to ensure that a dated record of the submission is available. This requirement is consistent with the closure certification which must be submitted by registered mail. Second, the Agency is convinced that an independent registered professional engineer should also certify the completion of the post-closure care period. This requirement would parallel the closure certification requirement in §§ 264.115 and 265.115. Therefore, §§ 264.120 and 265.120 require that an owner or operator submit a certification prepared by himself and an independent professional engineer stating that the post-closure care activities have been conducted in accordance with the approved post-closure plan.

2. Financial Assurance Requirements (Subpart H)

a. *Cost estimates for closure and post-closure care (§§ 264.142(a), 264.144(a), 265.142(a) and 265.144(a)).* The previous provisions in §§ 264.142(a), 264.144(a), 265.142(a) and 265.144(a) required owners or operators to prepare written estimates of the costs of closure and post-closure care. The previous regulations did not specify the level of detail and did not indicate whether cost estimates should be based on the cost to the owner or operator of supplying his own labor and equipment (first-party costs) or the cost of hiring contractor labor and renting equipment (third-party costs). The previous regulations also did not address whether credit for salvage value from hazardous waste equipment and the like would be credited toward the cost estimate.

In developing the final rules, the Agency has been made aware of confusion over the level of detail required in the cost estimates. The previous regulations stated that the owner or operator must prepare a written cost estimate but did not specify the level of detail. As a result, some have argued that a bottom line estimate should be sufficient. Because the cost estimates are based directly upon the closure and post-closure plans and serve as the basis for financial assurance, the cost estimates must contain sufficient detail to allow them to be evaluated. The Agency expects the detailed cost estimates to support the detailed activities described in the closure and post-closure plans. The Agency is today amending §§ 264.142(a), 265.142(a), 264.144(a), and 265.144(a) to clarify that a detailed cost estimate is required.

In the March 19, 1985 proposed rule, the Agency specified that closure and post-closure cost estimates be based on the costs to the owner or operator of hiring a third party to perform closure or post-closure care activities. The Agency reasoned that use of third-party costs would ensure that if an owner or operator failed to conduct closure or post-closure care, adequate funds would be available to hire a third party to do so. The Agency also proposed to specify explicitly that salvage value may not be

incorporated into the closure cost estimate.

A number of commenters supported the Agency's proposal to require third-party costs. Other commenters opposed the proposed change on three separate grounds: use of third-party costs will increase the cost estimates considerably; cost estimates generated by a third party will not be as accurate as estimates prepared by the owner or operator; and third-party costs will be difficult to generate due to the limited number of contractors available. It also was argued that parties using the financial test should not be required to use third-party costs.

The Agency firmly believes that the cost estimates must be based on third-party costs to ensure that adequate funds are available to cover the costs of closure and post-closure care in the event that the owner or operator fails to cover the costs. The Agency recognizes, however, that in some cases, using third-party costs could increase the size of the estimate. This is especially likely with respect to the costs of on-site vs. off-site disposal of hazardous wastes. Because the objective is to ensure that sufficient funds are available to cover the costs of closure if the owner or operator fails to do so, the Agency will allow the cost estimate to incorporate the costs of on-site disposal of hazardous wastes by a third party if the owner or operator can demonstrate that on-site capacity will always be available over the life of the facility. This will minimize the additional costs of a third-party requirement. Aside from these on-site vs. off-site disposal costs, basing the cost estimate on first or third-party costs will not make much difference for land disposal units. The cost estimates will be similar because many of the activities required for closure will be done by a third party whether or not the cost estimate is first or third-party based. For example, firms may not have the expertise to place a final cover on a landfill themselves or they may not wish to do so because the company selling the materials for the cover normally will not guarantee its impermeability unless it (or its authorized representative) installs it. Certification costs will also be similar whether the cost estimate is based on first or third-party costs as EPA requires that an independent registered professional engineer must certify closure.

The Agency does not agree with commenters who argued that contractor estimates will not be as accurate as estimates made by the owner or operator or that it will be difficult to develop third-party cost estimates because of a lack of contractors. The proposed rule did not require that the cost estimate be prepared by a contractor, but rather required that the cost estimate incorporate the costs incurred if a contractor performed the work. Therefore, the owner or operator may develop the cost estimate using costs estimating manuals or personal experience (e.g., prices charged for off-site management of hazardous wastes). Furthermore, the Agency has found, in developing cost estimates for closure and post-closure care, that standard cost estimating manuals as well as information from contractors are readily available to develop third-party estimates. The Agency believes, therefore, that cost estimates based on third-party costs will be *more* accurate as general information exists on contractor costs which does not exist for first-party costs.

The Agency also remains convinced that eligibility to use the financial test as demonstration of financial assurance should be based on third-party costs. First, the third-party cost estimates are likely to be more accurate than those based on first-party costs. Second, the financial test is intended to ensure that an owner or operator who passes the test has the financial capability to establish one of the alternative forms of assurance should he later fail the test. The criteria of the test that are dependent on the size of the cost estimates are intended to provide an adequate margin of safety so that the alternative mechanisms can be established before any potential insolvency occurs. Because the other forms of financial assurance will be based on third-party costs, the multiples must also be based on third-party costs.

In light of these considerations, the Agency is promulgating a third-party cost estimate requirement in today's final rule. The final rule specifies explicitly that the cost estimate may incorporate the costs of on-site disposal of hazardous wastes by a third party if the owner or operator can demonstrate that capacity will always be available over the life of the facility.

The final rule adds a definition of a third party to Subpart H. For purposes of Subpart H, §§ 264.142(a)(2), 264.144(a)(1), 265.142(a)(2) and 265.144(a)(1) state that a third party is a party who is neither a parent nor a subsidiary of the owner or operator.

On the issue of salvage value, the Agency proposed to disallow salvage value as a credit when calculating cost estimates on the grounds that the Agency cannot be assured that the hazardous wastes will be saleable or that a third party will take them at no charge at closure. One commenter supported the proposal while one argued that salvage value should be allowed if brokers or dealers for used equipment can be identified. The Agency still is convinced that allowing salvage value to be credited towards the cost estimate is inconsistent with the goal of ensuring that adequate funds are available in the event that the owner or operator fails to cover the costs. As a result, in the final rule, §§ 264.142(a)(3) and 265.142(a)(3) prohibit the incorporation of salvage value in the closure cost estimates.

In addition to disallowing a credit for salvage value for hazardous wastes, the Agency also is specifying explicitly in the final rule that an owner or operator cannot assume that at closure a third party will take hazardous wastes at no charge. Consistent with the arguments above, the Agency cannot be assured that if an owner or operator fails to close the facility, a third-party would take the hazardous waste at no charge. To avoid potential ambiguities in the regulatory language, the Agency is explicitly stating in §§ 264.142(a)(4) and 265.142(a)(4) that an owner or operator may not incorporate in the closure cost estimate a zero cost for handling hazardous wastes with potential value.

b. *Anniversary date for updating cost estimates for inflation (§§ 264.142(b), 264.144(b), 265.142(b) and 265.144(b)).* The previous regulations required owners or operators to update their closure and post-closure cost estimates for inflation within 30 days after the anniversary of the date that the first cost estimates were prepared. To ensure that the financial assurance instrument accounts for the most recent cost estimate (including updates to inflation), the Agency proposed to require owners or operators to revise their cost estimates within 60 days *prior* to the anniversary date of the establishment of their financial assurance instrument. For firms using the financial test, the cost estimate should be updated within 30 days of the end of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in §§ 264.143(f)(3) and 265.143(e)(3).

Most commenters supported the proposal to update the cost estimates prior to the anniversary date of the establishment of the financial instrument and, as a result, the Agency is promulgating the rule as proposed.

The Agency also proposed in the March 19, 1985 promulgation to allow owners or operators the option of recalculating the cost estimates based on current costs as an alternative to

using the Implicit Price Deflator for GNP published in the *Survey of Current Business*. In addition, the Agency proposed to require that owners or operators use the most recently published annual Implicit Price Deflator in order to reflect the most recent inflation.

One commenter suggested that owners or operators be *required* to recalculate annually the cost estimate based on current costs on the grounds that the Implicit Price Deflator will not account for increases in costs due to reasons other than inflation (e.g., increases in costs of landfilling). While the Agency agrees that requiring owners or operators to recalculate the cost estimate annually based on current costs may result in the most accurate estimate, the Agency recognizes that this could impose a significant burden on owners or operators and would not always be necessary. Therefore, the Agency is promulgating the rule as proposed.

c. *Revisions to the cost estimates (§§ 264.142(c), 264.144(c), 265.142(c) and 265.144(c))*. The previous regulations required the owner or operator to revise the closure and post-closure cost estimates during the operating life of the facility whenever a change in the plans increases the costs of closure or post-closure care. No deadlines were imposed for revising the estimates.

The Agency proposed to require that owners or operators with approved plans adjust their cost estimates within 30 days after the Regional Administrator has approved the modification if the change increases the costs of closure or post-closure care. For interim status facilities without approved closure or post-closure plans, the adjustment must be made within 30 days of the change in the plans if the change increases the cost estimates. Section 264.142(c) of the proposed regulations inadvertently required that the revision be made if the change in the closure plan *affects* the cost of closure. The final rule has been revised to correct this inconsistency. It now reads as it did originally, that the revision is required if the change in the closure plan *increases* the cost of closure.

d. *Post-closure cost estimates (§§ 264.144(c) and 265.144(c))*. Sections 264.144(c) and 265.144(c) previously required the owner or operator to revise the post-closure cost estimates during the operating life of the facility whenever a change in the post-closure plan increased the cost of post-closure care. The previous rules did not define operating life.

The Agency intended that post-closure financial assurance be adjusted as necessary until the facility was closed. Consistent with the new definition of active life, the Agency proposed to require that the post-closure cost estimate be revised as necessary during the active life of the facility. The Agency received no comments to this proposed change and is promulgating §§ 264.144(c) and 265.144(c) as proposed.

e. *Trust fund pay-in period (§§ 264.143(a)(3) and 265.143(a)(3))*. The existing language of § 264.143(a)(3) requires the payments to the trust fund to be made over the term of the initial permit or over the remaining life of the facility, whichever is shorter. For interim status facilities, the pay-in period is 20 years or the remaining operating life of the facility, whichever is shorter. Although the trust fund may cover a number of units with different operating lives, the current regulation ties the pay-in period to the life of the facility rather than to particular units. In the March 19, 1985 proposal, the Agency requested comments on approaches to handling the trust fund pay-in period for multiple process facilities.

Some commenters argued that the pay-in period should be based on the shortest operating life of any unit at a multiple process facility; others suggested retaining the existing requirements. One commenter recommended that, within three years, the trust fund should contain enough funds to close the unit likely to incur the highest closure costs.

As discussed in the preamble to the January 12, 1981 Subpart H regulations, the Agency allowed a 20-year pay-in period to minimize the potential adverse economic impacts on smaller firms most likely to be using trust funds (See 46 *FR* 2823). The Agency is concerned that if the trust fund pay-in period is based on the shortest operating life of a unit of the facility, owners or operators intending to partially close facilities in the near future would face very high costs. For example, if an owner or operator closed a landfill cell after one year rather than at the end of the facility's operating life, he would be required to fully fund the trust fund much earlier than originally intended. Moreover, the Agency is concerned that such an accelerated pay-in period could discourage owners or operators from partially closing their facilities. Therefore, the Agency intends to examine further such questions as the cost effects and enforcement implications of changing the trust fund pay-in period for such facilities before proposing any changes to the current requirements.

f. *Reimbursement for closure and post-closure expenditures from trust fund and insurance (§§ 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11) and 265.145(d)(5))*. The previous closure/post-closure trust fund and insurance provisions allowed an owner or operator, or any other person authorized to conduct closure or post-closure care, to request reimbursement for expenditures from the trust fund or insurance policy by submitting itemized bills to the Regional Administrator. Within 60 days, the Regional Administrator would instruct the trustee or insurer to make reimbursements, if he determined that the activities were in accordance with the approved plans or were otherwise justified. The Regional Administrator could withhold reimbursements if he determined that the total costs of closure would exceed the value of the trust or insurance policy.

In response to a concern from the *ACCI* petitioners that a decision to withhold reimbursements should be supported by a written explanation that can serve as a record for review, the proposed rule required the Regional Administrator to provide a detailed written statement of reasons to the owner or operator if he does not instruct the trustee or insurer to make requested reimbursements. The proposed rule also specified provisions for handling reimbursements for partial closure activities. Under the proposed rule, an owner or operator could be reimbursed for partial closure activities if the partial closure reduced the maximum extent of operation of the facility and the Regional Administrator found that the activities had been in accordance with the approved plan or were otherwise justified.

Commenters generally supported the proposal to require a detailed written statement of reasons why the Regional Administrator was withholding reimbursement. A few commenters were concerned that the Regional Administrator should not be allowed to withhold reimbursements for minor violations of the closure or post-closure plan and/or permit requirements. Other commenters argued that the Regional Administrator should not be allowed to withhold more than 20 percent of the funds, and that reimbursements should be automatic unless, within a specified time, the Regional Administrator provides a statement of reasons for refusing the reimbursements.

It was also suggested that reimbursements for partial closures should be allowed if there are adequate funds remaining in the trust fund or insurance policy to cover the maximum

costs of closing the facility over its remaining life.

The Agency agrees with commenters that the regulations should not preclude reimbursements for minor paperwork violations. The Agency believes, however, that the proposed regulatory language provides the necessary flexibility to the Regional Administrator by allowing reimbursements if the activities are in accordance with the approved plan, or if the activities are otherwise justified. Therefore, the final rule specifies that an owner or operator is eligible for reimbursements if the activities have been performed in accordance with the approved plans or are otherwise justified. As discussed below, reimbursements will be made only if sufficient funds are remaining in the trust fund or insurance policy.

The Agency does not agree that the Regional Administrator should be allowed to withhold only up to 20 percent of the value of the trust fund or insurance policy. As discussed in the preamble to the April 7, 1982 rules, (See 47 *FR* 15040), the Agency is concerned that in some instances where the cost estimate is found to be seriously inadequate, more than 20 percent should be held in reserve. The Agency also disagrees with the suggestion that reimbursements should be made automatically if the Regional Administrator does not act upon the request within a specified length of time. Because of the complexity of certain closure activities and the importance of ensuring that the activities protect human health and the environment, the Agency considers it inappropriate to establish such deadlines. Therefore, the Agency is promulgating the rule substantially as proposed.

The Agency is making a clarifying change to the language in the final rule. The proposed rule allowed reimbursements if partial closure reduced the maximum extent of operation. In developing the final rule for reimbursement provisions, the Agency considered it more appropriate to examine the amount of funds remaining in the fund than the maximum extent of operation. As a result, the final rule specifies that an owner or operator may request reimbursements only if sufficient funds, exclusive of future inflation adjustments, are remaining in the trust fund or insurance policy to cover the maximum costs of closing the facility at any time over its remaining life.

g. *Final administrative order required (§§264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii) and 265.145(b)(4)(ii)).* The previous regulations provided that an owner or operator may satisfy the financial assurance requirements for closure and/or post-closure care by obtaining a financial guarantee surety bond. The bond provides that if the owner or operator fails to fund a standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to begin closure or post-closure care is issued by the Regional Administrator or by a court, the surety will become liable. In response to the *ACCI* petitioners, the Agency proposed to provide additional procedural protections to owners or operators by requiring that a *final* administrative order is necessary before action can be required by the surety. EPA wishes to emphasize that only final *administrative* action, not judicial review, is required in all these cases.

No comments were received concerning this amendment, and the Agency is promulgating the rule as proposed.

h. *Final administrative determination required (§§ 264.143(c)(5) and (d)(8), 264.145(c)(5) and (d)(9), 265.143(c)(8), 265.145(b)(5) and 265.145(c)(9)).* The Part 264 regulations provide that an owner or operator may demonstrate financial assurance for closure and/or post-closure care by obtaining a surety bond guaranteeing performance. Under Parts 264 and 265, an owner or operator also could satisfy the financial assurance requirements by obtaining a letter of credit. Under the terms of the performance bond and letter of credit, the surety or bank issuing the letter of credit would become liable on the bond or letter of credit obligation when the owner or operator fails to perform closure or post-closure care as guaranteed by the bond or letter of credit. The previous regulations provided that such a failure was indicated by a determination made pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the closure or post-closure plan and other applicable requirements. In response to concerns of the *ACCI* petitioners, the Agency proposed to require that a "final" administrative determination under Section 3008 of RCRA be required before the surety must perform closure or post-closure care or deposit the penal sum of the bond into a trust fund or the Regional Administrator may draw on a letter of credit.

No comments were received concerning this amendment. However, as explained above, the final rule specifies that the determination must be a final determination.

i. *Cost estimates for owners or operators using the financial test or corporate guarantee must include UIC cost estimates for Class I wells (§§ 264.143(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 264.145(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 265.143(e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D), 265.145(e)(1)(i) (B) and (D), and 265.145(e)(1)(ii) (B) and (D)).* On March 19, 1985, the Agency proposed a requirement that an owner or operator seeking to use the financial test to demonstrate financial responsibility must include the most current cost estimates of the plugging and abandonment costs of Class I underground injection control (UIC) facilities, if applicable, when calculating the sum of closure and post-closure cost estimates for the financial test. EPA has established in 40 CFR Part 144 financial responsibility requirements for the owners or operators of Class I UIC facilities paralleling those established in 40 CFR Parts 264 and 265, including the same set of criteria for passing the financial test. Neither the UIC financial test nor the RCRA financial test, however, currently requires inclusion of the most current cost estimates for the other program. EPA was concerned that a firm able to pass the UIC and RCRA financial tests separately might not have the financial strength to take the required actions if UIC plugging and abandonment and RCRA closure and/or post-closure care activities were required simultaneously. Therefore, the Agency proposed that the most current cost estimates prepared as part of the Part 144 requirements be included in the total cost estimate required under 40 CFR Subpart H to evaluate whether a firm is able to pass the financial test.

Commenters generally favored the inclusion of UIC plugging and abandonment cost estimates in the Subpart H financial test requirements, and the Agency is promulgating the rule as proposed. In addition, the Agency is promulgating the proposed language in §§ 264.141 and 265.141 which defines the "current plugging and abandonment cost estimate" as the most recent cost estimates prepared under § 144.62.

j. *Cost estimates must account for all facilities covered by the financial test and corporate guarantee (§§ 264.143(f)(2), 264.145(f)(2), 265.143(e)(2) and 265.145(e)(2)).* The previous regulations specified that the phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of §§ 264.143 and 264.145, and paragraph (e)(1) of §§ 265.143 and 265.145, refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (*See*

§ 264.151(f)). The Agency proposed a minor change to include by reference the UIC cost estimates.

No comments were received concerning this proposal, and the Agency is adopting the rule as proposed.

K. *Release of the owner or operator from the requirements of financial assurance for closure and post-closure care (§§ 265.143(i), 264.145(i), 265.143(h) and 265.145(h)).* Previously, §§ 265.143(i) and 265.143(h) required the owner or operator to submit certification to the Regional Administrator from himself and from an independent registered professional engineer that closure had been accomplished in accordance with the closure plan. Within 60 days after receiving the certifications, unless the Regional Administrator had reason to believe that closure was not in accordance with the plan, the Regional Administrator was required to notify the owner or operator that he is no longer required to maintain financial assurance for closure. Sections 264.145(i) and 265.145(h) specified that the owner or operator was relieved of his post-closure financial assurance obligations when the owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements.

The Agency proposed to drop the reference to the "independent" registered professional engineer in §§ 264.143(i) and 265.143(h) to be consistent with the proposed changes to §§ 264.115 and 265.115. The proposed rule also added a requirement to §§ 264.143(i), 264.145(i), 265.143(h), and 265.145(h) that the Regional Administrator must provide the owner or operator with a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans.

For the same reasons that the final rule is retaining the independent registered professional engineer certification requirement, the final rule also retains the reference to the independent registered professional engineer in §§ 264.143(i) and 265.143(h). Similarly, because the final rule requires in §§ 264.120 and 265.120 that an owner or operator must submit a certification from himself and an independent registered professional engineer that post-closure care has been completed in accordance with the approved post-closure plan, §§ 264.145(i) and §§ 265.145(h) are revised to specify that within 60 days after receiving the required post-closure care certifications the Regional Administrator will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care for that unit (or facility). Today's rule promulgates as proposed the requirement that the Regional Administrator must provide the owner or operator with a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans.

l. *Period of liability coverage (§§ 264.147(e) and 265.147(e)).* The regulations previously required owners or operators to provide sudden accidental and, if applicable, nonsudden accidental liability coverage until certifications of closure have been received by the Regional Administrator. Because the Agency proposed to require that partial closures of disposal units be certified, units within a facility may be closed and certified while other units continue to operate. The Agency does not consider it appropriate to alter the amount of financial assurance required for sudden or nonsudden liability coverage as a result of such partial closures. Therefore, the proposed rule clarified that an owner or operator must provide liability coverage continuously as required until the certification of *final* closure is received by the Regional Administrator.

The Agency also believes that release from liability coverage requirements should be consistent with the procedures for releasing the owner or operator from closure financial responsibility requirements under §§ 264.143(i) and 265.143(h). Therefore, today's final rule states that owners or operators must maintain liability coverage until the Regional Administrator notifies the owner or operator in writing that he is released from this obligation.

m. *Wording of instruments (§ 264.151).* On March 19, 1985 the Agency proposed two changes to the wording of the instruments allowed under §§ 264.143, 264.145, 265.143, and 265.145. These changes, intended to ensure consistency with the other amendments in the proposal, modified § 264.151(b) to provide that the surety is responsible for funding the standby trust fund within 15 days after a "final" order to begin closure has been issued, and modified § 264.151(f) by adding an additional paragraph requiring owners and operators using the financial test to list the most current cost estimates associated with their Class I UIC facilities under the Part 144 financial responsibility requirements.

Because some owners or operators may use the financial test to cover closure and post-closure costs as well as liability coverage, the final rule adds a parallel paragraph to § 264.151(f), new paragraph (g), to require these owners or operators to list cost estimates associated with their Class I UIC facilities under the Part 144 final responsibility requirements.

Those firms with surety bonds or letters from the chief financial officer issued before the effective date of these regulations must change those instruments to reflect these wording changes as §§ 264.143, 265.143, 264.145 and 265.145 require that the wording of these instruments be identical to the applicable wording in §264.151. For owners or operators using surety bonds, the wording changes must be made within 60 days prior to the anniversary date of the establishment of the financial instrument(s), as per §§ 264.142(b), 265.142(b), 264.144(b) and 265.144(b). For owners or operators using the financial test or corporate guarantee, the changes must be made within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator, as specified in §§ 264.142(f), 265.142(e), 264.145(f), and 265.145(e).

C. Interim Status Standards (Part 265)

1. Applicability of Requirements (§ 265.110(b))

Section 265.110(b) specified that the post-closure care regulations apply to all hazardous waste disposal facilities. Surface impoundments and waste piles that are unable to remove all hazardous wastes are required under §§ 265.228 and 265.258 to be closed as landfills and must comply with the post-closure care requirements. Therefore, in order to clarify the applicability of §§ 265.117–265.120, the Agency proposed in § 265.110(b) that the post-closure care requirements apply to the owners or operators of all hazardous waste disposal facilities and piles and surface impoundments for which the owner or operator intends to remove the wastes at closure but is required to close the facility as a landfill.

The Agency received no comments on this clarification and is promulgating the final rule as proposed.

2. Waste Pile Closure Requirements Included by Reference in the Closure Performance Standard (§ 265.111(c))

Section 265.112(a)(1) previously required the closure plan to include a description of how and when the facility will be partially closed, if applicable, and finally closed. The description must specify how the applicable requirements of the closure performance standard

specified in § 265.111 and the process-specific standards in Subparts J through Q will be met. The Agency proposed to incorporate the technical standards in the process-specific regulations into the closure performance standard in § 265.111 and to revise § 265.111 to include a reference to § 265.258, which establishes closure requirements for waste piles. Closure requirements specific to waste pile facilities had not been promulgated prior to the promulgation of the Subpart G regulations, and thus were not previously referenced.

No comments were received concerning this proposal, and the Agency is adopting the rule as proposed.

3. Submission of Interim Status Closure and Post-Closure Plans (§§ 265.112(d), 265.118(e))

Sections 265.112(c) and 265.118(c) required owners or operators to submit their closure and post-closure plans 180 days prior to final closure. The proposed amendment specified that owners or operators of facilities with a landfill, surface impoundment, waste pile, or land treatment unit must submit their closure and post-closure plans for review and approval 180 days prior to the first partial closure. Facilities with only container storage, storage or treatment tanks, or incinerators must submit the closure plan 45 days prior to final closure. After the closure plan has been approved, the owner or operator is required to notify the Regional Administrator prior to all partial closures of landfills, surface impoundments, waste piles, and land treatment units and prior to final closure. Unless changes are made to the approved closure plan, however, the proposed rule did not require the owner or operator to seek reapproval of the closure plan for each subsequent partial closure or final closure.

Some commenters suggested that owners or operators be required to submit only that portion of the closure plan applicable to the unit being closed. The Agency disagrees with this suggestion. All owners or operators of interim status facilities were required to have their plans available on-site by May 19, 1981. Therefore, no additional burden is imposed on the owner or operator by requiring that the entire plan be submitted.

The Agency believes that it is necessary that the entire plan be submitted to ensure that the plans adequately address the activities required at the entire facility. Especially if the owner or operator intends to handle some of the hazardous wastes on-site, it is essential to ensure that the facility has incorporated these requirements into the closure plan. If necessary to ensure protection of human health and the environment, the Regional Administrator may approve only that portion of the plan applicable to the partial closure.

4. Written Statements by Regional Administrator of Reasons for Refusing to Approve or Reasons for Modifying Closure or Post-Closure Plan (§§ 265.112(d)(4), 265.118(f))

Sections 265.112(d) and 265.118(d) previously specified that the Regional Administrator would approve, modify, or disapprove the closure plan and, if applicable, post-closure plan within 90 days of their receipt from the owner or operator. If the Regional Administrator did not approve the plan, the owner or operator was required to modify the plan or submit a new plan for approval within 60 days. If the Regional Administrator modified the plan, this modified plan became the approved closure and post-closure plan.

In response to the contention of the *ACCI* petitioners that this provision provided the Regional Administrator with undue discretion, the Agency proposed in §§ 265.112(d) and 265.118(f) to require the Regional Administrator to provide a detailed written statement of reasons for refusing to approve or reasons for modifying a closure or post-closure plan. In addition, to be consistent with the provisions of § 265.112(d) applicable to approving the closure plan, the Agency also proposed in § 265.118(f) that the Regional Administrator will hold a public hearing on approving the post-closure plan whenever such a hearing would clarify the issues.

The commenters generally favored these proposed changes and the Agency is promulgating the rule as proposed.

D. Typographical Errors

The final rule corrects a number of typographical errors included in the proposed rule.

E. Permitting Standards (Part 270)

1. Contents of Part B: General Requirements (§§ 270.14(b) (14), (15), and (16))

Section 270.14(b)(14) specified that the Part B application must include documentation that the notice in the deed required under § 264.120 has been filed. Because many Part B applications will be filed prior to closure of a hazardous waste disposal unit, it will not be possible to include documentation indicating that the notices have been filed. Therefore, the Agency proposed to amend § 270.14(b)(14) to require documentation to be included in the Part B application only for facilities with hazardous waste disposal units closed prior to the submission of the application. In addition, because the notice in the deed requirement is now included in § 264.119, the reference in § 270.14(b)(14) to § 264.120 has also been amended.

Section 270.14(b) (15) and (16) previously specified that the Part B application must include a copy of the most recent closure and post-closure cost estimates as required by §§ 264.142 and 264.144 and documentation required to demonstrate closure and post-closure financial assurance in accordance with the requirements of §§ 264.143 and 264.145, if applicable. Sections 264.143 and 264.145 require that for new facilities, demonstration of financial assurance must be made at least 60 days prior to the initial receipt of hazardous wastes. Because an owner or operator of a new facility may submit the Part B application more than 60 days prior to the initial receipt of hazardous wastes, the Agency also proposed to amend §§ 270.14(b) (15) and (16) to specify that a copy of the demonstration of financial assurance must be included with the submission of the Part B application, or at least 60 days prior to the initial receipt of hazardous wastes, whichever is later.

The Agency received no comments on any of these proposed changes and is promulgating them as proposed.

2. Minor Modifications of Permits (§ 270.42(d))

Section 270.42(d) previously stated that a change in ownership or operational control of a facility may be considered a minor permit modification provided that the Director determines that no other change is necessary in the permit and that a written agreement has been submitted to the Director which specifies the date for transfer of permit responsibility, coverage, and liability between the current and new permittees. The Agency wishes to ensure that facilities are transferred to financially viable firms and thus proposed to require that the new owner demonstrate compliance with the Subpart H regulations within three months of the transfer of ownership. The preamble inadvertently stated that the proposed rule allowed for a six-month deadline for demonstrating financial assurance although the proposed rule referred to the requirements of § 270.72 which proposed a three-month deadline.

Some commenters argued that a six-month time limit was too short while others argued that it was too long. Another commenter was concerned that the regulation did not state whether the old owner or operator remains responsible if the new owner or operator fails to demonstrate financial assurance within the allotted time period. Finally, one commenter noted that the reference to the deadlines in § 270.72, which address requirements for interim status facilities, is confusing for permitted facilities.

The Agency disagrees with those commenters who argued that six months is insufficient time to demonstrate financial assurance. The Agency is extending the three-month period allowed in the proposed rule to six months. EPA is also clarifying the Agency's intent that the old owner or operator is responsible for financial assurance obligations if the new owner or operator fails to meet his obligations. Finally, the final rule clarifies the language of § 270.42. The proposal included a reference in § 270.42 to the deadlines of § 270.72. Because § 270.72 refers to interim status facilities, the Agency was concerned that owners or operators may not recognize that the deadlines in § 270.72 also applied to permitted facilities under § 270.42. To avoid potential ambiguities, the final rule states explicitly in § 270.42(d) that the new owner or operator must demonstrate financial assurance within six months of the transfer of ownership.

3. Changes During Interim Status (§ 270.72(d))

Section 270.72(d) stated that when there is a transfer of ownership or operational control of an interim status facility, the old owner or operator is responsible for complying with the Subpart H requirements until the new owner or operator demonstrates compliance with the financial responsibility requirements. Consistent with the proposed changes to § 270.42(d) for permitted facilities, the Agency proposed to require that the new owner or operator demonstrate financial assurance within three months of the transfer of ownership.

For the reasons discussed above, the Agency is allowing the new owner or operator six months to demonstrate financial assurance. The old owner or operator is responsible for financial assurance until the new owner or operator fulfills his obligations under Subpart H.

III. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA are applied in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement promulgates standards that will not be effective in authorized States since the requirements will not be imposed pursuant to the HSWA. Thus, the requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must revise its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in 40 CFR § 271.21.

It should be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of RCRA, States are allowed to impose standards which are more stringent than those in Federal program. Some of the standards promulgated today are considered to be less stringent than or reduce the scope of the previous Federal requirements. Those provisions appear in Sections: 264.112(a), 264.118(a), 265.112(a), 265.118(a), 264.112(b)(7), 264.112(e), 265.112(e), 264.113, 265.113, 264.115, 265.115, 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5), 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.145(c)(5), 264.145(d)(9), 265.143(c)(8), 265.145(c)(9), 265.112(b)(7), 264.112(d), 265.112(d), 265.118(e), and 265.118(f). Authorized States will not be required to revise their programs to adopt requirements equivalent or substantially equivalent to the provisions identified above.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being promulgated today to Subparts G and H are not "major rules." Some of the amendments are technical corrections

designed to clarify the intent of the regulations issued January 12, 1981. The changes are not likely to result in a significant increase in costs and thus are not a major rule. No Regulatory Impact analysis has been prepared.

V. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0008.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). Many of the changes promulgated today clarify the existing regulations and thus result in no additional costs. For those amendments that will result in an increase in costs, the costs are not significant enough to impact adversely the viability of small entities.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

VII. Supporting Documents

A background document was prepared for the Subpart G closure and post-closure care regulations and for the financial assurance regulations promulgated on January 12, 1981. In addition, background documents were prepared for the financial assurance regulations published on April 7, 1982. Supporting materials, including a background document, discussing the most significant issues raised by the amendments promulgated today have been prepared and are included in the docket for these regulations.

The supporting materials are available for review in the public docket, Room S–212–E U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

EPA will prepare guidance manuals to assist owners or operators and regulatory officials and will make them available from EPA Headquarters and the Regional Offices.

VIII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow sufficient lead time for the regulated community to prepare to comply with major new regulatory requirements. Section 553(d) of the Administrative Procedures Act prohibits "publication of service of a substantive rule . . . less than 30 days before its effective date except for good cause." For the amendment to § 270.14(b)(14) promulgated today, however, the Agency believes that an effective date six months or 30 days after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interest of the regulated community and the public.

Today's amendment to § 270.14(b)(14) requires that an owner or operator seeking a permit submit documentation that notices required under § 264.119 have been filed only for hazardous waste disposal units that have been closed. The previous regulations required that documentation of such notices be submitted for the entire facility, whether or not units have been closed at the time the permit application is submitted.

The Agency believes it makes little sense that the intended relief from this requirement be delayed for six months. This is especially true in light of the requirement that owners or operators of land disposal facilities submit their permit applications by November 8, 1985 (see HSWA § 213). Consequently, the Agency is setting an effective date of May 2, 1986, for the amendment to § 270.14(b)(14) promulgated in this rulemaking action.

Dated: March 8, 1986.

Approved:

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

Subpart B—Definitions

2. In 40 CFR Part 260 Subpart B, § 260.10 is amended by adding the following terms alphabetically to the existing list of terms:

§ 260.10 Definitions.

* * * * *

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Regional Administrator receives certification of final closure.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this Chapter are no longer conducted at the facility unless subject to the provisions in § 262.34.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Parts 264 and 265 of this Chapter at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924 and 6925).

2. 40 CFR Part 264 Subpart G, §§ 264.110–264.120 are revised to read as follows:

Subpart G—Closure and Post-Closure

Subpart G—Closure and Post-Closure

§ 264.110 Applicability.

Except as § 264.1 provides otherwise:

(a) Sections 264.111–264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.116–264.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 264.228 or 264.258.

§ 264.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351.

§ 264.112 Closure plan; amendment of plan.

(a) *Written plan.* (1) The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by §§ 264.228(c)(1)(i) and 264.258(c)(1)(i) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance procedures under Part 124 of this Chapter. In accordance with § 270.32 of this Chapter, the approved closure plan will become a condition of any RCRA permit.

(2) The Regional Administrator's approval of the plan must ensure that the approved closure plan is consistent with §§ 264.111–264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan and all approved revisions must be furnished to the Regional Administrator upon request, including request by mail.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 264.111;

(2) A description of how final closure of the facility will be conducted in accordance with § 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

(7) For facilities that use trust funds to establish financial assurance under §§ 264.143 or 264.145 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) *Amendment of plan.* The owner or operator must submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Parts 124 and 270. The written request must include a copy of the amended closure plan for approval by the Regional Administrator.

(1) The owner or operator may submit a written request to the Regional Administrator for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(3) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit

modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under §§ 264.228(c)(1)(i) or 264.258(c)(1)(i), must submit an amended closure plan to the Regional Administrator no later than 60 days from the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of § 264.310, or no later than 30 days from that date if the determination is made during partial or final closure. The Regional Administrator will approve, disapprove, or modify this amended plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this Chapter, the approved closure plan will become a condition of any RCRA permit issued.

(4) The Regional Administrator may request modifications to the plan under the conditions described in § 264.112(c)(2). The owner or operator must submit the modified plan within 60 days of the Regional Administrator's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Regional Administrator will be approved in accordance with the procedures in Parts 124 and 270.

(d) *Notification of partial closure and final closure.*

(1) The owner or operator must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(2) The date when he "expects to begin closure" must be either no later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in § 264.113.

(e) *Removal of wastes and decontamination or dismantling of equipment.* Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to in § 264.113(a) and (b) must be made as follows: (1) The demonstrations in paragraph (a) must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a); and (2) the demonstration in paragraph (b) must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b).

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.228, 264.258, 264.280, or 264.310. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this Chapter.

§ 264.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by

registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

§ 264.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfills cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations.

§ 264.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 264.117–264.120 must begin after completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

(2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Regional Administrator may, in accordance with the permit modification procedures in Parts 124 and 270:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 264.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 264.118.

§ 264.118 Post-closure plan; amendment of plan.

(a) *Written Plan.* The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days from the date that the owner or operator or Regional administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of §§ 264.117–264.120. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance procedures under Part 124 of this Chapter. In accordance with § 270.32 of this Chapter, the approved post-closure plan will become a condition of any RCRA permit issued.

(b) For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Regional Administrator upon request, including request by mail. After final closure has been certified, the person or office specified in § 264.188(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.

(d) *Amendment of plan.* The owner or operator must request a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of Parts 124 and 270. The written request must include a copy of the amended post-closure plan for approval by the Regional Administrator.

(1) The owner or operator may submit a written request to the Regional Administrator for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator no later than 90 days after the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of § 264.310. The Regional Administrator will approve, disapprove or modify this plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this Chapter, the approved post-closure plan will become a permit condition.

(4) The Regional Administrator may request modifications to the plan under the conditions described in § 264.118(d)(2). The owner or operator must submit the modified plan no later than 60 days after the Regional Administrator's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the Regional Administrator will be approved, disapproved, or modified in accordance with the procedures in Parts 124 and 270.

§ 264.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 264.116 and § 264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (b)(1) of this Section, including a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Parts 124 and 270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

40 CFR Part 264 Subpart H is amended as follows:

1. In § 264.141, the following term is added to paragraph (f) in alphabetical order:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(f) * * *

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this title.

* * * * *

2. In § 264.142, paragraphs (a), introductory text of (b) and (c) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the

most expensive, as indicated by its closure plan (see § 264.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 264.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 264.142(b).

* * * * *

3. In § 264.143, paragraphs (a)(10), (b)(4)(ii), (c)(5), (d)(8), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(a) * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) * * *

(8) Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be signficantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the

sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

4. In § 264.144, paragraphs (a), the introductory text of (b), and paragraph (c) are revised to read as follows:

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, land treatment, or landfill unit, or of a surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120, 264.228, 264.258, 264.280, and 264.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 264.141(d).)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 264.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator as specified in § 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 264.145(b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 264.144(b).

* * * * *

5. In § 264.145, the introductory paragraph and paragraphs (a)(11), (b)(4)(ii), (c)(5), (d)(9), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

The owner or operator of a hazardous waste management unit subject to the requirements of § 264.144 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. He must choose from the following options:

(a) * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) * * *

(9) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-

closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) * * *

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(i) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

* * * * *

6. In § 264.147, paragraph (e) is revised to read as follows:

§ 264.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

7. In § 264.151 paragraph (b) is revised and paragraphs (f)(5) and (g)(5) are added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(b) A surety bond guaranteeing payment into a trust fund, as specified in § 264.143(b) or § 264.145(b) or § 265.143(b) or § 265.145(b) of this Chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

* * * * *

(f) * * *

(5) This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

* * * * *

(g) * * *

(5) This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and

abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

* * * * *

PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005 and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6935).

2. In 40 CFR Part 265 Subpart G, §§ 265.110–265.120 are revised as follows:

Subpart G—Closure and Post-Closure

Subpart G—Closure and Post-Closure

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.116–265.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these Sections are made applicable to such facilities in §§ 265.228 or 265.258.

§ 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

§ 265.112 Closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and

(7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under §§ 265.143 or 265.145 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

(c) *Amendment of plan.* The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Regional Administrator to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Regional Administrator.

(1) The owner or operator must amend the closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(2) The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who

intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with § 265.310.

(3) An owner or operator with an approved closure plan must submit the modified plan to the Regional Administrator at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with § 265.310. If the amendment to the plan is a major modification according to the criteria in § 270.41 and §270.42, the modification to the plan will be approved according to the procedures in § 265.112(d)(4).

(4) The Regional Administrator may request modifications to the plan under the conditions described in paragraph (c)(1) of this Section. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the request from the Regional Administrator, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in §§ 270.41 and 270.42, the modification to the plan will be approved in accordance with the procedures in § 265.112(d)(4).

(d) *Notification of partial closure and final closure.*

(1) The owner or operator must submit the closure plan to the Regional Administrator at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners and operators with approved closure plans must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final order under Section 3008 of RCRA to cease receiving hazardous wastes or close.

(4) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure plan. The Regional Administrator must assure that the approved plan is consistent with §§ 265.111 through 265.115 and the applicable requirements of §§ 265.90 *et seq.*, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(e) *Removal of wastes and decontamination or dismantling of equipment.* Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of

hazardous wastes at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) (i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii) (A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in § 265.113(a) and (b) must be made as follows: (1) The demonstrations in paragraph (a) must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a); and (2) The demonstrations in paragraph (b) must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b).

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of Part 262 of this Chapter.

§ 265.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

§ 265.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations.

§ 265.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 265.117–265.120 must begin after completion of closure of the unit and continue for 30 years after that date. It must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Regional Administrator may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administator may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Regional Administrator within 90 days of the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of §§ 265.117–265.120.

(b) Until final closure of the facility, a copy of the most current post-closure

plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator. After final closure has been certified, the person or office specified in § 265.118(c)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(d) *Amendment of plan.* The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Regional Administrator to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Regional Administrator.

(1) The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(2) The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

(3) An owner or operator with an approved post-closure plan must submit the modified plan to the Regional Administrator at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with §§ 265.228(b) or 265.258(a) is required to close as a landfill in accordance with § 265.310, the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Regional Administrator that the unit must be closed as a landfill. If the amendment to the post-closure plan is a major modification according to the criteria in §§ 270.41 and 270.42, the modification to the plan will be approved according to the procedures in § 265.118(f).

(4) The Regional Administrator may request modifications to the plan under the conditions described in above paragraph (d)(1). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Regional Administrator. If the amendment to the plan is considered a major modification according to the criteria in §§ 270.41 and 270.42, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). If the Regional Administrator determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Regional Administrator within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(f) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must ensure that the approved post-closure plan is consistent with §§ 265.117 through 265.120. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Regional Administrator to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in paragraph (g)(1) of this section.

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subparagraph (g)(1)(ii) of this section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

§ 265.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 265.116 and § 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification signed by the owner or operator that he has recorded the notation specified in paragraph (b)(1) of this Section and a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart H—Financial Requirements

40 CFR Part 265 Subpart H is amended as follows:

1. In § 265.140, paragraph (a) is revised as follows:

§ 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143 and 265.147 through 265.150 apply to owners or operators of all

hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

* * * * *

2. In 40 CFR § 265.141, the following term is added to paragraph (f) in alphabetical order:

§ 265.141 [Amended]

* * * * *

(f) * * *

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this Title.

* * * * *

3. In § 265.142, paragraphs (a) and the introductory text of paragraph (b), and paragraph (c) are revised. Paragraphs (b)(i) and (b)(ii) are correctly designated as paragraphs (b)(1) and (b)(2), respectively.

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 265.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

(4) The owner or operator may not incorporate a zero cost for hazardous waste that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.143(e)(3). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 265.142(b).

* * * * *

4. In § 265.143, paragraphs (a)(10), (b)(4)(ii), (c)(8), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(a) * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 265.143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(8) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 265.143(h), that the owner or operator is no longer required

to maintain financial assurance for final closure of the particular facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this Section.*

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

5. In § 265.144, paragraphs (a), introductory text of (b) and (c) are revised to read as follows:

§ 265.144 Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117–265.120, 265.228, 265.258, 265.280, and 265.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in § 265.141(d).)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 265.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.145(d)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 265.145 (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Regional Administrator has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 265.144(b).

* * * * *

4. In § 265.145, the introductory paragraph and paragraphs (a)(11), (b)(4)(ii), (c)(9), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.145 Financial assurance for post-closure care.

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

* * * * *

(a) * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) * * *

* * * * *

(c) * * *

(9) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in

accordance with the approved post-closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) * * *

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this Section.*

Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator will provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

* * * * *

7. In § 265.147, paragraph (e) is revised to read as follows:

§ 265.147 Liability Requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

Subpart B—Permit Application

40 CFR Part 270 Subpart B is amended as follows:

2. In § 270.14, paragraphs (b)(14), (15) and (16) are revised to read as follows:

§ 270.14 Contents of Part B application: General requirements.

* * * * *

(b) * * *

(14) For hazardous waste disposal units that have been closed, documentation that notices required under §264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with §264.142 and a copy of the documentation required to demonstrate financial assurance under § 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the documentation required to demonstrate financial assurance under § 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

* * * * *

3. In § 270.42, paragraph (d) is revised to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Director. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 264, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with

Subpart H as of the date of demonstration.

* * * * *

4. In § 270.72, paragraph (d) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

* * * * *

[FR Doc. 86-6368 Filed 5-1-86; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Friday,
May 2, 1986

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation (FAR); Public Comments Concerning Contract Changes Clauses; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Public Comments Concerning Contract Changes Clauses

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering changes to Federal Acquisition Regulation (FAR) 52.243–1 through 52.243–4, Changes clauses.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 16, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–26 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background.

Because of comments received from industry, it was considered necessary to review the Changes clauses at FAR 52.243–1 through 52.243–4. Comments on this subject were solicited by means of a notice in the **Federal Register** on May 23, 1985 (50 FR 21313). The responses received were evaluated and provide the basis for the proposed revisions appearing herein.

Accordingly, the FAR Changes clauses 52.243–1 through 52.243–4, are revised to provide that the contractor must "assert its right to an adjustment" rather than "submit a proposal for adjustment," within 30 days from the receipt of a written order. These proposed revisions essentially impose the same requirements on the contractor as those previously in effect in the Defense Acquisition Regulation and the Federal Procurement Regulations Changes clauses.

B. Regulatory Flexibility Act Analysis Summary

Economic Impact of Proposed Rule

Incorporation of the proposed rule in the Federal Acquisition Regulation may result in a significant economic impact on a substantial number of small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit a determination are hereby solicited.

Alternatives to the Proposed Rule

The proposed rule is expected to have a favorable economic impact on small entities. Under the current FAR coverage, the contractor must submit a proposal for adjustment within 30 days after receipt of a change order. Under the proposed revision, the contractor need only assert the right to an adjustment within the 30-day period. Since the rule will not have an unfavorable impact on small entities, consideration of possible alternatives is unnecessary.

C. Paperwork Reduction Act.

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 52.243–1 through 52.243–4 do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: April 28, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 52.243–1 is amended by inserting a period in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

§ 52.243–1 Changes—Fixed-Price.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. * * *

* * * * *

3. Section 52.243–2 is amended by inserting a period in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

§ 52.243–2 Changes—Cost-Reimbursement.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order.* * *

* * * * *

4. Section 52.243–3 is amended by inserting a period in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

§ 52.243–3 Changes—Time-and-Materials or Labor Hours.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. * * *

* * * * *

5. Section 52.243–4 is amended by inserting a period in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising the second sentence of paragraph (d) of the clause; by revising the first sentence of paragraph (e) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

§ 52.243–4 Changes.

* * * * *

(d) * * * However, except for an adjustment based on defective

specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. * * *

(e) The contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. * * *

* * * * *

[FR Doc. 86-9830 Filed 5-1-86; 8:45 am]

BILLING CODE 6820-61-M

Federal Register

Friday
May 2, 1986

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut Fisheries; Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 60475-6075]

Pacific Halibut Fisheries

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

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, WA 98105, 206-624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The substantive changes from the previous regulations, published at 50 FR 13382 (April 4, 1985), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) changes are made in the boundaries of certain halibut regulatory areas and the closed area, and Subarea 2A-1 is abolished in § 301.4; (3) new requirements for retrieval of halibut fishing gear from closed areas are prescribed; (4) vessel clearance requirements for various parts of Area 4 are changed; (5) new requirements for recording of commercial halibut catches on State or Provincial fish tickets are added; (6) certain vessels fishing in Areas 4C and 4E are excused from the 72-hour prohibition before a halibut fishing season on the use of setline gear to fish for any species; (7) changes are made in the sport fishing seasons for 1986 and 1987.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, Jensen v. National Marine Fisheries Service, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. Section 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: April 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

§ 301.1 Short title.

This part may be cited as the *Pacific Halibut Fishery Regulations.*

§ 301.2 Interpretation.

(a) In this part,

Charter vessel means a hired vessel under direct control of a licensed operator that is used in sport fishing for halibut.

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered.

Commission means the International Pacific Halibut Commission.

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Land with respect to halibut means to bring to shore and to offload.

License means a halibut fishing license issued by the Commission pursuant to §§ 301.10 and 301.17 of this part.

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.4 of this part.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing.

(b) In this part, all bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issued by the United States National Ocean Survey or the Canadian Hydrographic Service.

§ 301.3 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.4 to 301.16 apply only to commercial fishing for halibut.

(c) Section 301.17 applies only to sport fishing for halibut.

(d) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.4 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention (see the map of Regulatory Areas in the Appendix to this part):

(a) Area 2A includes all waters off the coasts of the states of California, Oregon, and Washington.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.) and south of latitude 54°49'00" No. in Isanotski Pass.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.7 that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.7 which are east of a line extending true northwest (315°) from a point at latitude 56°20'00" N., longitude 170°00'00" W., south of latitude 58°00'00" N., and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00'00" W.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.7, east of longitude 168°00'00" W., and south of latitude 65°34'00" N.

§ 301.5 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.8 have not been taken.

	2A
6/16–6/28	8/12–8/24
7/15–7/27	9/10–9/22
	2B
5/03–5/11	8/30–9/07
6/07–6/15	9/27–10/05
	2C–3A–3B
4/30–5/02	8/25–8/27
5/29–5/31	9/23–*
	4A
4/30–5/02	7/29–8/05
5/29–5/31	8/25–8/27
6/30–7/03	9/23–*
	4B
5/29–6/01	8/25–8/27
6/30–7/03	9/23–*
7/29–8/05	
	4C
6/01–6/02	7/29–7/30
6/03–6/04	7/31–8/01
6/05–6/06	8/02–8/03
6/07–6/08	8/04–8/05
6/09–6/10	8/06–8/07
6/11–6/12	8/08–8/09
6/13–6/14	8/10–8/11
6/15–6/16	8/12–8/13
6/17–6/18	8/14–8/15
6/19–6/20	8/16–8/17
6/21–6/22	8/18–8/19
6/23–6/24	8/20–8/21
6/25–6/26	8/22–8/23
6/27–6/28	8/24–8/25
6/29–6/30	8/26–8/27
7/01–7/02	8/28–8/29
7/03–7/04	8/30–8/31
7/05–7/06	9/01–9/02
7/07–7/08	9/03–9/04
7/09–7/10	9/05–9/06
7/11–7/12	9/07–9/08
7/13–7/14	9/09–9/10
7/15–7/16	9/11–9/12
7/17–7/18	9/13–9/14
7/19–7/20	9/15–9/16
7/21–7/22	9/17–9/18
7/23–7/24	9/19–9/20
7/25–7/26	9/21–9/22
7/27–7/28	9/23–9/24
	4D
6/30–7/03	9/23–*
7/29–8/08	
	4E
6/01/–6/03	8/18–8/20
6/04–6/06	8/21–8/23
6/07–6/09	8/24–8/26
6/10–6/12	8/27–8/29
6/13–6/15	8/30–9/01
6/16–6/18	9/02–9/04
6/19–6/21	9/05–9/07
6/22–6/24	9/08–9/10
6/25–6/27	9/11–9/13
6/28–6/30	9/14–9/16
7/01–7/03	9/17–9/19
7/04–7/06	9/20–9/22
7/07–7/09	9/23–9/25
7/10–7/12	9/26–9/28
7/13–7/15	9/29–10/01
7/16–7/18	10/02–10/04
7/19–7/21	10/05–10/07
7/22–7/24	10/08/–10/10
7/25–7/27	10/11/–10/13
7/28–7/30	10/14/–10/16
7/31–8/02	10/17/–10/19
8/03–8/05	10/20/–10/22
8/06–8/08	10/23/–10/25
8/09–8/11	10/26/–10/28
8/12–8/14	10/29/–10/03
8/15–8/17	

*Date to be announced by the Commission.

(b) Notwithstanding paragraph (a) of this section, where Area 3A is closed under § 301.8 on a date before the attainment of the catch limit in Area 3B, Area 3B will close on the same date.

(c) Where Area 3B is closed under paragraph (b) of this section, it shall reopen on the next scheduled opening date on the schedule of fishing periods referred to in paragraph (a) of this section and continue on that schedule until the catch limit specified in § 301.8 is attained.

(d) Each fishing period shall begin and terminate at 1200 hours Pacific Standard Time on the date set out in the table to this section, unless the Commission specifies otherwise. See the schedule and map of time zones in the Appendix to this part for correct local time.

(e) All commercial fishing for halibut shall cease at 1200 hours Pacific Standard Time on October 31.

§ 301.6 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.5 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.14 (f) and (g), this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No person shall retrieve any halibut fishing gear from a closed area if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear in a closed area after notifying a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

§ 301.7 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W., south of a line from the latter point to

Cape Newenham (latitude 58°39'00" N., longitude 162°10'25" W.), and north of latitude 54°49'00" N. in Isanotski Pass are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.8 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.5 shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	550,000	249
2B	11,200,000	5,080
2C	11,200,000	5,080
3A	28,100,000	12,746
3B	10,300,000	4,672
4A	2,000,000	907
4B	1,700,000	771
4C	600,000	272
4D	700,000	318
4E	50,000	23

(b) The weights in each catch limit shall be computed on the basis that the heads of the fish are off and their entrails removed.

(c) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(d) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 38,400,000 pounds (17,418 metric tons) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,700,000 pounds (1,678 metric tons) for the combined areas is taken.

(g) When under paragraphs (c), (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.9 Size limits.

(a) No person shall take or possess any halibut that

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the Appendix to this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the Appendix to this part.

(b) No person shall mutilate or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.10 Licensing of vessels.

(a) The Commission may issue a license in respect of a vessel used for halibut fishing.

(b) No person shall fish for halibut from a vessel, nor possess halibut caught from a vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraph (b) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(d) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(f) Licenses issued under this section shall be valid only during the year in which they are issued.

(g) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(h) No person shall:

(1) Fish for halibut while on board a vessel in respect of which the Commission has issued a license while that vessel is in an area where commercial fishing for halibut is not permitted under this part; or

(2) Possess halibut while on board a vessel referred to in paragraph (h)(1) of this section in an area referred to in that paragraph unless that vessel is in transit to or within a port in which that halibut may be lawfully sold.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

§ 301.11 Vessel clearance and hold inspection.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 of this part shall fish for halibut in Area 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Area 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.7 may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States, a representative of the Commission, or a designated commercial fish processor.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the opening in that Area.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section is not valid if the vessel has fished for halibut in Area 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

§ 301.12 Logs.

(a) The operator of any vessel five (5) net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.13 Receipt and possession of halibut.

(a) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(b) A copy of the fish tickets referred to in paragraph (a) of this section shall be:

(1) Retained by the person making them for a period of two years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(c) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(d) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (a) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (b) of this section.

(e) It shall be illegal to enter a Halibut Commission license number on a State or Provincial fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.14 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear except as provided in § 301.15.

(c) No person shall possess halibut while on board a vessel carrying any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing in a regulatory area shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number, which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(e) All setline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing in a regulatory area shall be marked as required by the *British Columbia Fishery (General) Regulations.*

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in § 301.4 (h) and (j).

§ 301.15 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.16 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.17 Sport fishing for halibut.

(a) Sport fishing for halibut is only permitted from February 1 to December 31, 1986, and from February 1 to October 31, 1987.

(b) No person shall engage in sport fishing for halibut using gear other than a headline or rod with no more than two hooks attached, or a spear.

(c) No person shall catch, possess, or land more than two halibut of any size per day from a vessel that is engaged in sport fishing.

(d) After two halibut have been taken by any person engaged in sport fishing, those halibut shall be landed before that person takes more halibut on any succeeding day.

(e) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(f) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel.

(g) A license issued in respect of a vessel referred to in paragraph (f) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(h) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(i) Licenses issued under this section shall be valid only during the year in which they are issued.

§ 301.18 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

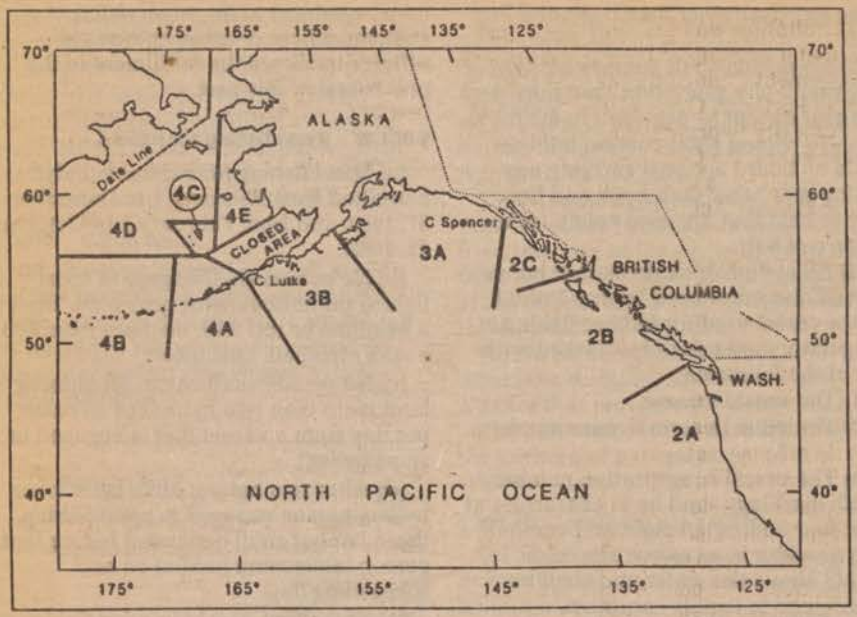
Appendix to Part 301

Schedule

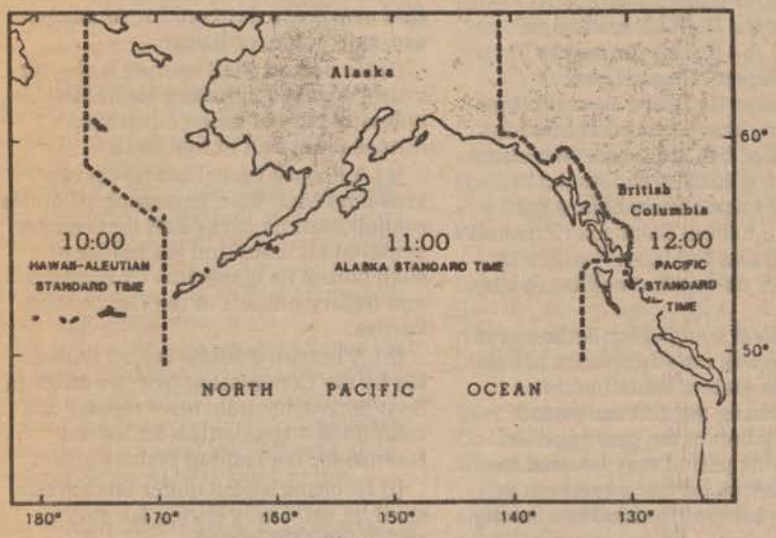
Legal Opening and Closing Hours for Halibut Fishing for Standard Time (ST) and Daylight Savings Time (DT) in Different Time Zones of the Northeastern Pacific Ocean.

Time zone	Pacific		Alaska		Aleutian	
	PST	PDT	AkST	AkDT	AlST	AlDT
Hours	1200	1300	1100	1200	1000	1100

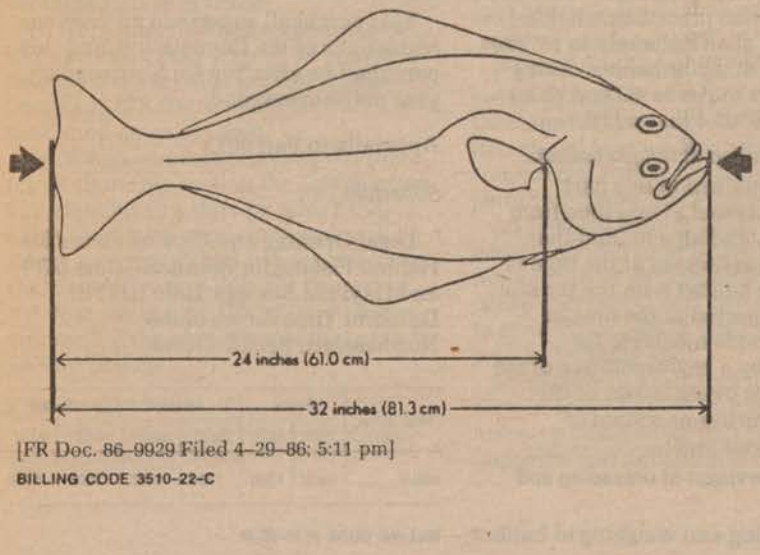
BILLING CODE 3510-22-M



Regulatory areas



Time zones



[FR Doc. 86-9929 Filed 4-29-86; 5:11 pm]
BILLING CODE 3510-22-C

50 CFR Part 301

[Docket No. 60474-6074]

Pacific Halibut Fisheries—United States Treaty Indian Tribes

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

ACTION: Emergency interim rule and request for comment.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, issues an emergency interim rule to implement measures recommended by the International Pacific Halibut Commission (Commission) and approved by the Secretary of Commerce (Secretary) to govern fishing by certain U.S. treaty Indian tribes in the Pacific halibut fishery. These regulations establish a special quota and commercial fishing season for halibut off the State of Washington for members of four U.S. treaty Indian tribes.

DATES: This rule is effective April 29, 1986 until modified, superseded, or rescinded. Comments are due by May 29, 1986.

ADDRESS: Send comments to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206-526-6150.

SUPPLEMENTARY INFORMATION: The Commission, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), recommended at its annual meeting on January 27–30, 1986, that the government of the United States take regulatory action, pursuant to its domestic law and separate from the Commission's action, to provide for the United States' special obligations to four treaty Indian tribes with historic treaties containing fishing provisions. Those recommendations, which have been approved by the Secretary, include establishing a special Subarea 2A-1 under § 301.19 within the Commission's Regulatory Area 2A, providing a suballocation of 50,000 pounds of halibut to the four treaty Indian tribes in Regulatory Area 2A, and setting an open season for commercial halibut fishing by the tribes beginning April 30 and closing when the subquota is reached or on October 31, whichever occurs first.

Consultation was had with the Coast Guard at a meeting of the Pacific Fishery Management Council on March 11–13, 1986, in Portland, Oregon. The Secretary has authority to promulgate regulations implementing the Commission's recommendations under the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c.

The regulations establish Subarea 2A-1 under § 301.19 which includes the off-reservation halibut fishing areas of the four treaty Indian tribes in the ocean off the coast of Washington and in the Strait of Juan de Fuca. Subarea 2A-1 is not intended to describe precisely the historic off-reservation halibut fishing places of all tribes, as the location of those places has hot been determined. The regulations also provide a tribal suballocation of 50,000 pounds based on the Commission's conservative estimate of the amount of fish equalling half of the exploitable biomass of halibut within Subarea 2A-1 . The regulations establish a special commercial season in Subarea 2A-1 beginning April 30 and ending October 31, or when the tribal subquota is reached, whichever occurs first, which is designed to maximize the tribes' opportunity to harvest their full allocation. The regulations also establish a special U.S. treaty Indian tribal subsistence and ceremonial season in Subarea 2A-1 which begins on April 30 and ends on December 31, 1986. This subsistence and ceremonial fishery allows tribal members to take and retain up to two halibut per day on hook-and-line gear, but not to sell the fish caught.

The regulations are time critical and require implementation without prior public comment and without delaying their effectiveness although public comment has been invited for 30 days after their effective date. They are the result of intricate negotiations following a lawsuit filed by the Makah Tribe in 1935 to force the Federal government to protect their asserted treaty-protected fishing rights. Given the protracted and bitter litigation over treaty Indian salmon rights, now in its eighteenth year, NOAA's representatives to the IPHC deemed it in the best interests of the United States and the halibut fishery to support the tribes' proposals for a special season and allocation beginning in 1986. The United States' position, which resulted in the Commission's recommendations, was based on the outcome of a series of meetings with all affected parties, including all segments of the non-Indian halibut fishing community. The Commission's recommendations and implementing regulations are the popularly preferred alternative to continued litigation.

It was the Commission's recommendation, and the common understanding of the affected parties, that regulations would be promulgated in time to provide for a treaty Indian commercial season beginning on April 30, 1986. Without emergency implementation of the regulations, treaty Indian halibut fishing will be prevented until June 16, the beginning of the regularly scheduled commercial season in Regulatory Area 2A. Failure to promulgate the regulations effective immediately would negate the Commission's action, breach the agreements reached among the affected parties, undermine the Federal government's credibility, and force the matter to the attention of the courts.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Northern Pacific Halibut Act and other applicable law, including the United States obligations to Canada and to U.S. treaty Indians.

Absent emergency issuance, tribal commercial fishing would be prevented until June 16, 1986, the opening of the regularly scheduled commercial season for all citizens in the Commission's Regulatory Area 2A. Given the time constraints, treaty obligations, and international obligations under the Protocol, the Assistant Administrator finds there is good cause to promulgate these regulations on an emergency basis and that it is impracticable and contrary to the public interest in resolving litigation issues to require notice and public comment, or to delay the effective date of the regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The policy of NOAA is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this rule to the Regional Director at the address above. Comments must be received by the date specified above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order. In

addition, NMFS has determined that this rule is not a major rule within the terms of E.O. 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comments.

The implementation of a treaty Indian fishery by these regulations is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act.

This rule does not contain any collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Fishing.

Dated: April 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301 [AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 USC 773–773k.

2. In the table of contents, a new section designation is added, to read as follows:

§ 301.19 United States treaty Indian tribes.

3. A new § 301.19 is added, to read as follows:

§ 301.19 United States treaty Indian tribes.

(a) *Purpose.* The purpose of this section is to implement recommendations of the International Pacific Halibut Commission (IPHC) to govern fishing for halibut by four United States treaty Indian tribes in certain marine fishing areas off the coast of Washington and in the Strait of Juan de Fuca.

(b) *Relation to other laws.* Except as provided in this section, all regulations of the IPHC in this part apply to halibut fishing by members of United States treaty Indian tribes.

(c) *Definitions.* United States treaty Indian tribes means the Makah, Quileute Hoh, and Quinault tribes located in the State of Washington.

(d) *Area.* Within IPHC Regulatory Area 2A, Subarea 2A–1 includes waters off the coast of Washington from the U.S.-Canada border south to 46°53′18″ N. latitude (Point Chehalis) and east of 125°44′ W. longitude. Within Subarea 2A–1, boundaries of a tribe's fishery may be revised as ordered by a Federal court.

Tribe	Boundaries
Makah	North of 48°02′15″ N. latitude (Norwegian Memorial), east of 125°44′00″ W. longitude, and west of longitude 123°42′30″.
Quileute	Between 48°07′36″ N. latitude (Sand Point) and 47°31′42″ N. latitude (Queets River), and east of longitude 125°44′00″.
Hoh	Between 47°54′18″ N. latitude (Quillayute River) and 47°21′00″ N. latitude (Quinault River), and east of longitude 125°44′00″.
Quinault	Between 47°40′06″ N. latitude (Destruction Island) and 46°53′18″ N. latitude (Point Chehalis), and east of longitude 125°44′00″.

(e) *Quota.* Of the total allowable catch in IPHC Regulatory Area 2A, 50,000 pounds (23 metric tons) is suballocated to the U.S. treaty Indian tribes regardless of where the fish are taken by those tribes in Regulatory Area 2A. All fish taken by members of U.S. treaty Indian tribes in Subarea 2A during the season described in paragraph (f)(1) of this section will count toward this quota whether or not the fish are sold.

(f) *Season.* (1) For members of U.S. treaty Indian tribes, the commercial fishing season in Subarea 2A–1 shall commence on April 30 and terminate when the quota for the tribes specified in paragraph (e) of this section is reached, or on October 31, whichever is earlier.

(2) For members of the U.S. treaty Indian tribes, a subsistence and ceremonial fishing season in Subarea 2A–1 shall commence on April 30, 1986 and 1987, and terminate on December 31, 1986, and October 31, 1987. In this subsistence and ceremonial fishery, treaty Indians may take and retain, but not sell, up to two halibut per day caught on hook-and-line gear.

(g) *Identification of U.S. treaty Indian.* Any member of a U.S. treaty Indian tribe as defined in paragraph (c) of this section who is fishing under this part shall have in his or her possession a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A. This identification is not a substitute for the commercial halibut vessel license required of all commercial halibut fishermen by the IPHC.

[FR Doc. 86–9928 Filed 4–29–86; 5:11 pm]

BILLING CODE 3510–22–M

federal register

Friday
May 2, 1986

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Least Bell's Vireo; Determination of Endangered Status, and Reopening of Comment Period on the Proposed Critical Habitat Designation

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the least Bell's vireo (*Vireo bellii pusillus*) to be an endangered species. This action is being taken because loss of habitat has greatly restricted the vireo's breeding range, and nest parasitism by the brown-headed cowbird (*Molothrus ater*) has greatly reduced nesting success within much of its remaining breeding habitat. The action is based, in part, on a petition received by the Service on November 8, 1979. The least Bell's vireo presently occurs in southwestern California and northwestern Baja California, Mexico, an area representing only a fraction of its former range. The final decision on determination of critical habitat included in the proposed rule is postponed in accordance with section 4(b)(6)(C) of the Endangered Species Act. The rule provides protection to all populations of this bird.

DATES: The effective date of this rule is June 2, 1986. In a separate document published in today's **Federal Register**, the Service reopens the comment period on the proposed critical habitat designation.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo is a small, gray, migratory songbird that feeds mainly on insects. The bird usually constructs its nest low in thickets along willow-dominated riparian habitats. The normal clutch of four eggs is incubated about 14 days. The young remain in the nest approximately 10–12 days. The least Bell's vireo arrives in its breeding habitat in mid-March to early April, and departs in late August and September for its wintering range in Mexico.

Three other subspecies of Bell's vireo are recognized by the American Ornithologists' Union (1957): *Vireo bellii bellii* of the midwestern United States; *V. b. medius* of Texas; and *V. b. arizonae* of the southwestern United States and northern Mexico. While all are fairly similar in behavior and life history, all the subspecies are geographically separated on their breeding ranges (Hamilton 1962). Virtually all Bell's vireos winter in Mexico.

The least Bell's vireo occupies a more restricted nesting habitat than the other subspecies. It primarily inhabits dense, willow-dominated riparian habitats with lush understory vegetation, which is limited to the immediate vicinity of water courses. The other subspecies of Bell's vireo also inhabit upland areas such as desert scrub. Thus, the narrow and limited nature of the habitat of the least Bell's vireo makes the subspecies more susceptible to major population reductions than are the other subspecies. At the present time no population of more than five pairs is known to occur below a major water control project.

Least Bell's vireos are known to nest primarily in willows but also use a variety of shrubs, trees, and vines. The birds forage in riparian and adjoining chaparral habitat (Salata 1983a). Preliminary studies of vireo foraging behavior along the Santa Ynez River and within the Mono Creek Basin (Santa Barbara County) indicate that more than 50 percent of the foraging occurs in the adjacent chaparral community; approximately 70 percent of the foraging observations were obtained from about 200 to 300 yards from the nest (Tom Keeney, biologist, U.S. Army Corps of Engineers, personal communication, July 31, 1985).

No other passerine (perching songbirds) species in California is known to have declined as dramatically as the least Bell's vireo. It primarily nests in small, remnant segments of willow-dominated riparian habitats. Most populations contain less than five breeding pairs. Once widespread and abundant throughout the Central Valley and other low-elevation riverine valleys, its historical breeding range extended from interior northern California (near Red Bluff, Tehama County) to northwestern Baja California, Mexico. In the last several decades, the subspecies apparently has been totally extirpated from the Sacramento and San Joaquin Valleys, which once were at the center of its breeding range. Its breeding range is now restricted (as of 1983–1984) to several localities in the Salinas River Valley, Monterey and San Benito Counties; one locality (as of 1979) along the Amargosa River, Inyo County; and numerous small populations in southern California south of the Tehachapi Mountains and in northwestern Baja California, Mexico.

Widespread loss of riparian habitats and brood parasitism by the brown-headed cowbird (*Molothrus ater*) have precipitated the decline in the least Bell's vireo. Destruction of riparian woodlands may have rendered the least Bell's vireo incapable of withstanding the spectacular increase in brown-headed cowbirds that began in the 1920's (Grinnell and Miller 1944, Gaines 1974, Laymon 1980). The population decline of the vireo has been well documented.

In 1973 no least Bell's vireo was found during an intensive search in formerly occupied habitat between Red Bluff, Tehama County, and Stockton, San Joaquin County (Gaines 1974). In 1977, the U.S. Fish and Wildlife Service reviewed the literature, examined museum material, and contacted numerous National Audubon Society chapters and knowledgeable field observers for information on the status of the least Bell's vireo (Wilbur 1980a).

Since then, several intensive vireo surveys of virtually all potential breeding habitat in California have been conducted (Gaines 1977, Goldwasser 1978, Goldwasser *et al.* 1980, unpublished Fish and Wildlife Service data). In total, least Bell's vireos have been reported from only 46 of over 150 former localities (some localities cover several miles of a water course) surveyed in the U.S. from 1977 through 1985. The surveys are based upon singing (or territorial) males. Counts of such males are an index to the population levels and are considered to be the maximum number present, since one male in five may not be paired or breeding at the time of the count. Based on this information, the present breeding population status of least Bell's vireo per county in California is as follows:

County	Sites [a]	Males [b]
San Benito	1	1
Monterey [c]	0	0
Inyo [c]	0	0
San Bernardino [c]	0	0
Santa Barbara	3	26
Ventura	1	5
Los Angeles	2	6
Orange	1	1
Riverside	8	29
San Diego	30	223
Total	46	291

[a] Number of different known breeding localities.
[b] Number of known territorial males.
[c] No known breeding in 1985.

Based on surveys conducted from 1977 to 1985, the Service estimates that approximately 300 territorial male least Bell's vireos occur in California (Fish and Wildlife Service, unpublished data). Preliminary surveys in Baja California, Mexico, resulted in the location of a number of small populations, but suitable habitat is declining and limited (Wilbur 1980b). There are probably several hundred breeding pairs in Baja California (Wilbur 1980b).

On November 8, 1979, the Service received a petition from James M. Greaves to list the Arizona and least Bell's vireos as endangered. A notice of acceptance of the petition and status review was published on February 6, 1980 (FR 8030). Based on the best scientific and commercial data available and other comments submitted during the status review, the Service found that the petitioned action was warranted for the least Bell's vireo on October 13, 1983 (49 FR 2485, January 20, 1984); however, action was precluded by other pending listing actions, in accordance with section 4(b)(3)(C)(i) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Section 4(b)(3)(C)(i) recycles such petitions, which resulted in a new finding deadline of October 13, 1984. A finding was made October 12, 1984, that this action on the least Bell's vireo was still warranted but precluded. Publication of the proposed rule appeared on May 3, 1985 (50 FR 18968), fulfilling the next finding required under section 4(b)(3)(B)(ii) of the Act.

Information generated from the above February 6, 1980, Notice of Status Review indicates that the Arizona Bell's vireo if relatively common and widely distributed in a variety of habitats in Arizona, New Mexico, and Mexico. It is not primarily restricted to early riparian successional stages as is *V. b. pusillus*. Although density estimates of *V. b. arizonae* along the Colorado River and adjacent areas are very low, the subspecies appears to be doing well throughout most of its geographical range (USFWS status review data). Thus, the proposal published by the Service was restricted to the least Bell's vireo (*V. b. pusillus*). A finding that the petitioned action for the Arizona Bell's vireo was not warranted was published January 20, 1984 (49 FR 2487).

Summary of Comments and Recommendations

In the May 3, 1985, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Blade Tribune* (May 31, 1985), *San Diego Transcript* (May 29, 1985), *San Bernardino Sun* (May 29, 1985), *San Diego Tribune* (May 30, 1985), *News Press* (May 29, 1985), *Enterprise* (May 31, 1985), *Los Angeles Times* (June 7, 1985), *Riverside Press* (May 30, 1985), and *San Diego Union* (May 30, 1985), all of which invited general public comment. A public hearing was requested by a number of interested parties. Public hearings were conducted in San Diego on July 30, 1985; in Oxnard on July 31, 1985; and in Anaheim, on August 1, 1985. A total of 370 individuals attended the hearings. Notification of the public hearings and an extension of the comment period to August 30, 1985, was published on July 9, 1985 (50 FR 27992). An additional notification extending the comment period to December 2, 1985, was published on October 3, 1985 (50 FR 40424). These two additional notifications were also published in the aforementioned nine newspapers in July and October, respectively.

During the comment period, totaling approximately 6 months, 219 comments on listing were received. Of the 180 comments that stated a position on listing, 171 (95%) supported listing and 9 (5%) did not; 39 comments were non-substantive. These comments are discussed below.

Support for the listing proposal was voiced by four elected officials, California Department of Fish and Game, several local government entities, 15 conservation organizations (or branches thereof), and 139 other interested parties.

Little opposition was received regarding the need to list the least Bell's vireo; however, concern over the listing was voiced from three local agencies, one organization, two landowners, and three other private parties. A number of developers, landowners, local agencies, several State agencies including the California Department of Transportation, and local governments submitted comments regarding the possible effects that listing, and particularly, designation of critical habitat, might have on planned activities and development.

Because of the complexity of the ecomomic analysis that must accompany the final rule designating critical habitats and the large number of comments and data received on these habitats, the Service has decided to make final only the listing portion of this rule at this time so that immediate protection of the least Bell's vireo would be possible. Section 4(b)(6)(C)(ii) of the Act allows the Service to extend the deadline for designating critical habitat for up to one year (May 3, 1987, in this case), if critical habitat is not yet determinable and/or immediate protection is needed for the species through a final listing action. Both of these reasons apply in this instance; therefore, the Service is now going forward with this final listing rule. Hence, the comments pertaining to designation of critical habitat or the potential economic impacts of such designation will not be discussed here but will be addressed when a final decision on critical habitat is made. Only comments addressing the issue of listing this species are responded to here. Numerous comments on administrative procedures, document availability, and future management of the vireo were received. Those comments that do not address the issue of listing will not be specifically responded to here.

Written comments and oral statements obtained during the public hearings and comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in a number of general groups, depending on content. These categories of comment, and the Service's response to each, are listed below.

Comment 1: What studies were used by the Service to support the decision to list the vireo and where are these available for review?

Service response: The studies reviewed by the Service are listed in the Reference Cited section of the proposed rule and in this final rule. In some cases, the data were supplied by personal communication with field biologists. Cited reports are available in the Service's Regional Office in Portland, Oregon, or in the Laguna Niguel, California, and Sacramento, California, field offices. Articles that were published in journals and were cited are available in many university libraries.

Comment 2: The notices for the public hearings and comments were inadequate and were not made public.

Service response: The Service's notification process is extensive and is summarized at the beginning of this section. The Service is required to publish a notice in local newspapers soliciting comments on the proposal and stating the particulars of any public hearing, if such is scheduled; to give notice of the proposal to appropriate scientific organizations; and to hold a

public hearing, if requested to do so within 45 days of the date of publication of the proposed rule. All requirements pertaining to the notification process were met by the Service as indicated at the beginning of this section.

Comment 3: The least Bell's vireo is already protected because it is listed as an endangered species by the State of California. Nesting habitat is adequately protected by county policies and State procedures. Section 4(b)(1)(A) of the Act states that those efforts being made by any state or political subdivision to protect such species must be considered in the decision to designate the species as federally listed.

Service response: In 1980 the least Bell's vireo was listed as endangered by the State of California. Since that time vireo numbers have continued to decline throughout most of its range. As set forth under Factor E in the section below on Summary of Factors Affecting the Species, the recent increases along the Santa Margarita River can be attributed to an active cowbird trapping program and not to a natural increase. Vireo habitat continues to disappear and/or be adversely modified in spite of its State listing. Recognition of the least Bell's vireo as a federally listed species will provide additional protection and the further potential for restoring its habitat and for managing the bird.

Comment 4: Significant habitat has been developed along minor streams and in narrow canyons from agricultural runoff. Expansion of the imported water supply and hillside agriculture has changed the runoff pattern so that year-round flow is now common. Riparian vegetation, especially willows, has developed in these narrow canyons and may be suitable for least Bell's vireos. These areas should be surveyed before any action is taken on listing the least Bell's vireo.

Service response: The Service is obligated to use the best available biological information to determine whether a species warrants listing. The Service has checked many sites with this type of habitat and found virtually no vireos. No data are currently available to support the suggestion that these small willow-dominated areas created by agricultural runoff or other small sites are important to the known status of the vireo or that such areas may be used for breeding purposes by vireos. The future of these artificially-created habitats is precarious because agricultural runoff water can be discontinued at any time. Alternatively, over time these habitats may be otherwise suitable for several decades, but may become too mature for the vireo because of a lack of scouring or other forces needed for long-term habitat maintenance. Mature riparian forests are not selected by the vireos for nesting; the birds select younger growths of willows and associated vegetation. The total number of vireos using such habitats (i.e., from agricultural runoff), even in the aggregate, appears to be very small.

Comment 5: In the Fallbrook area, habitat losses are not attributable to agricultural development. In fact 25–30 percent of all irrigation water applied to orchards ends up as return flow into channels. During 1975–1985 when most of the orchards were planted, the nitrate rich runoff water contributed significantly to enhancing the depth and breadth of the willow groves where little growth occurred previously.

Service response: The Service evaluated the past and current threats to determine if the least Bell's vireo should be designated as endangered. This evaluation indicates that conversion of land throughout the range of the vireo for agricultural purposes; pumping to withdraw water for crop maintenance; and construction of dams, channels, and other water conveyance systems have resulted in the loss of substantial vireo habitat. Agricultural practices have also inadvertently encouraged the expansion of the range of the brown-headed cowbird (Wilbur 1980a, Laymon 1980).

As far as the Fallbrook area is concerned, no data were supplied or available to the Service indicating that agricultural runoff was largely responsible for creating these willow habitats. There are other possible explanations for these changes. For example, as 1978–1980 were particularly wet years in this area, it appears possible that the recharging of the groundwater table after a lengthy dry period may have contributed to some of the new or expanded willow growth. Ground water may allow for riparian growth, but it does not provide for the periodic scouring that is a principal feature of the riparian habitat normally used by the vireo. Many riparian plants are routinely scoured by heavy water flows. The regrowth referred to by the commenter may be a response to natural patterns of scouring and regrowth rather than to the agricultural runoff. Periodic scouring would have to recur in order to maintain the vireo habitat in its early successional stages.

Comment 6: It is incorrect to say that San Diego County has sustained a loss of habitat. For example, the Tijuana River was devoid of riparian vegetation until the 100-year flood in 1980 caused regrowth. As the result of water importation, many new habitats have been created, supporting many more least Bell's vireos in southern California. All species of birds have increased because of the greater availability of water, including the native cowbird. In fact, the least Bell's vireo is not endangered.

Service response: Importation of water and groundwater pumping has encouraged agricultural conversion of riparian habitat because of a reliable, constantly available, and relatively inexpensive source of water. Some habitat undoubtedly has been created by agricultural runoff, but it appears to mainly entail small, isolated islands of riparian habitat that are little used by vireos. The creation of such isolated pockets of riparian habitat does not offset the more widespread losses of larger riparian areas in the past 80 years. There is no evidence to support the contention that the brown-headed cowbird is a native species of California, with the possible exception of a portion of the lower Colorado River and as an occasional vagrant. Its range expansion to the north and west has been well documented since the early 1900's (Laymon 1980).

There is no evidence to support the contention that all species of birds have increased in southern California as the result of importation of water or for any other reason. On the contrary, available data indicate that numerous species are experiencing declines in population numbers, several bird species are listed as endangered in southern California, and a number of species are considered candidates for listing. The Tijuana River, prior to settlement, was subject to regular scouring floods. Flood control projects in Mexico and agricultural practices in San Diego County had largely eliminated the habitat of the vireo sometime prior to the 1960's.

Comment 7: Surveys for the least Bell's vireo were started during a time of very adverse hydrologic conditions and the results are not representative of actual conditions today. A 32-year drought (1946–1977) ended with abnormally high rainfall in 1978. During 1978–1980, rainfall was exceptionally heavy. Only in the last year has large-scale regrowth of willows occurred to the extent that protected nesting sites were available to the least Bell's vireo. As the level of water in groundwater basins declines, there will be times when habitat will contract and disappear. The importance of a perennial water supply in creating and maintaining riparian vegetation should be assessed. Also, heavy precipitation and runoff from the wet winters (1978 to 1983) caused an increase in the width of some riparian habitat. Because the

recent wet period has ended, much of the recently expanded vegetation is expected to die back. Long-term protection should concentrate on riparian habitat that is dependent on stream flow and not currently existing groundwater sources.

Another commenter offered views directly contrary to the above and stated that many climatologists believe the weather has been unusually benign the last 30 years and that climate is now returning to the normal pattern of instability. Dry periods will be drier and wet periods will be wetter. Groundwater in the river basins will be the most stable element because of its ability to absorb, store, and slowly release accumulated surface flows. Unless additional dams are constructed and/or excessive pumping is done, the groundwater basin will continue to recharge and support willows as it has in the past.

Service response: The riparian ecosystems required by the vireo are dynamic systems, and the scouring of vegetation during periodic floods is required to create the low dense vegetation favored by the bird. At the present time, the Service knows of no significant numbers of vireos inhabiting below any major water control project in California or Mexico. Therefore, a surge of groundwater flow to surface flows would be required for scouring to maintain habitat quality. Otherwise, the willows will grow beyond the needs of the vireo, and a riparian forest will be created, which is habitat unsuitable to vireos. This is part of the problem in the Central Valley of California.

Natural expansion and contraction of riparian habitat is expected. However, because of the very low number of vireos, extensive contractions of habitat for more than a couple of years may suppress vireo numbers and reproduction to a point from which they could not recover.

Whether or not vireo habitat can be maintained by groundwater basins has bearing on the need to list the vireo. Groundwater tables apparently are in good condition now because of the series of wet winters, yet the vireo is still suffering from low numbers. As indicated above, high ground water levels (or low stream floods) allows the riparian vegetation to mature beyond the needs of the vireo. Periodic and regular scouring floods or some other agent must cause the habitat to revert to early successional stages. Willows and other vegetation over several yards (meters) in height are of little value to the vireo, except for some feeding.

Comment 8: Suitable habitat for the least Bell's vireo is plentiful. Rather than habitat being the critical limiting factor, it is predation and parasitism that are primarily responsible for the vireo's low numbers. Loss of riparian habitat and urban encroachment are clearly secondary factors. The San Luis Rey River and other existing and potential habitat in southern California have the capacity to support large populations of least Bell's vireos. During a 1978 survey of 69 miles (110 kilometers) of potential nesting habitat along the San Luis Rey River, Goldwasser (1978) found that only 13 miles (21 kilometers) or 19 percent of the habitat was occupied. What is the relative contribution of cowbird parasitism towards extinction of the vireo versus habitat disturbance?

Service response: The least Bell's vireo has been extirpated from over 95 percent of its former range. The contraction of range and reduction in numbers from a "common" species to an "extremely rare" one, has resulted, in part, from loss and/or adverse modification of habitat as described in the Summary of Factors Affecting the Species section. The Service also recognizes the substantial adverse impact from nest parasitism and predation. However, the Service has seen no evidence to document that cowbird parasitism plays the sole or primary role in the reduction in vireo numbers and range. The Service agrees that some apparently suitable vireo habitat is unoccupied, possibly because the previous population has been extirpated and vireo numbers are not high enough to provide a substantial pool of individuals to recolonize. In summary, the Service believes that the vireo is endangered by a combination of these factors and that the loss of habitat has been a significant contributory element along with the cowbirds.

Comment 9: Many wildlife species are numerous at Prado Dam only because of the artificial expansion of the riparian habitat created by the operation of Prado Dam.

Service response: Historically the Prado Basin area and adjacent Santa Ana River supported large numbers of wildlife species. Channelizing and concrete lining of the majority of the Santa Ana River downstream of Prado Dam has greatly diminished the amount of riparian habitat available for wildlife. Prado Dam encompasses an area that contained large amounts of riparian vegetation, much of which was destroyed when the basin was first flooded. Prado Dam may provide more wildlife habitat in Prado Basin than the latter had historically. In the Service's review of the status of the least Bell's vireo, the Service has considered the large reduction (hundreds of miles) in available riparian habitat throughout the vireo's overall range, not just the Santa Ana River area. Only two pairs of vireos are known to breed below Prado Dam on the Santa Ana River.

Comment 10: Riparian habitat along the San Dieguito River in the San Pasqual Valley did not exist in the 1950's prior to acquisition by the City of San Diego or in the 1960's prior to the sand mining activities associated with development of the flood control channels.

Service response: The presence of riparian vegetation as discussed in the response to a previous comment is dependent upon a number of factors. The San Pasqual Valley is owned by the City of San Diego and is an agricultural preserve. Riparian vegetation in the valley is limited by agricultural and sand mining operations. The Service believes that the San Dieguito River was typical of rivers in the area and was capable historically of supporting suitable riparian vegetation for least Bell's vireo. Construction of the Sutherland Dam approximately 50 years ago along the San Dieguito River resulted in loss of suitable vireo habitat downstream. The Service received no data to support the suggestion that sand mining operations or the City of San Diego have contributed directly to the establishment of significant amounts of riparian habitat where historically there has been none. Some suitable habitat is present now and is supporting a limited number of breeding least Bell's vireos.

Comment 11: The Service needs to assess the impacts on the survival of least Bell's vireos if no Federal or State projects are permitted, thereby eliminating a source of funding for habitat restoration.

Service response: The Service must base its decision to list a species on the five factors given in the "Summary of Factors Affecting the Species" section as mandated by the Act. Economics may not be considered in making the final decision on a listing proposal. It is not the intention of the Service to stop Federal or other projects. However, projects involving Federal funding or approval will be evaluated through the Section 7 consultation process. If through consultation the Service determines that a Federal project is likely to jeopardize the continued existence of the least Bell's vireo or result in the destruction or adverse modification of any designated critical habitat, which may be determined later, the Service may recommend reasonable and prudent alternatives to the proposed action.

Comment 12: The least Bell's vireo does not currently nest in Prado Basin. In the near future conditions will be too inhospitable for the vireo. The bird should have been protected years ago before plans were made to develop the area. The natural living and breeding habits of the vireo are not conductive to long-term preservation.

Service response: Recent surveys indicate that the vireo population in the Prado Basin-Santa Ana River area has declined to 14 territorial males (U.S. Fish & Wildlife Service, unpublished data). Cowbirds are ubiquitous in much of this area and are seriously reducing vireo productivity. The Service believes that with a suitable cowbird control program, vireo numbers in this area would increase. Plans to develop the area are a further indication that habitat loss and modification are a continuing threat to the vireo.

Comment 13: According to a description of the species and information on its range found in a field guide, the Bell's vireo is widespread and therefore not endangered.

Service response: The cited field guide was referring to the full species of Bell's vireo. The least Bell's vireo is one of four subspecies of Bell's vireo. Restricted to less than 5 percent of its original breeding habitat in California, the least Bell's vireo has approximately 300 territorial males in the United States and an undetermined number (thought to number several hundred pairs) in Mexico. The other three subspecies do not now appear to be at any risk to their continued existence.

Comment 14: Even with preservation of habitat, is it not too late to save the vireo?

Service response: The Service believes that it is not too late and an active recovery program will substantially augment vireo numbers to a point where extinction is far less probable. Prospect for recovery, however, is not a factor to be considered in listing a species (see below).

Comment 15: Listing the least Bell's vireo is premature. The listing process should be suspended for 24 months during which time local agencies will establish a cooperative cowbird trapping program. Local policies will be reviewed and modified to increase protection. Listing is only a passive response, whereas the above program would provide an actual process to conserve the least Bell's vireo.

Service response: The State of California listed the least Bell's vireo as endangered in 1980. The species continues to lose habitat and decline. The Service has carefully reviewed the status of the vireo and believes immediate listing is warranted. A host of actions will be required to conserve the least Bell's vireo, only one of which is cowbird control. While the desire of local agencies to aid in vireo recovery actions is commendable, the Service recognizes that more far reaching action is required. There is also no provision in the Act to delay listing for 24 months. The Service can postpone listing for 6 months pursuant to section 4(b)(6)(B)(i) of the Act but only if substantial disagreement among experts exists regarding the sufficiency or accuracy of the available data on the status of the species. No such disagreement exists for the least Bell's vireo.

Comment 16: Many comments anticipated future Section 7 consultations on Federal projects involving habitat areas occupied by the least Bell's vireo. Highway projects, oil drilling, recreational facilities, and other types of construction activities were identified. One comment implied that the "traditional concept of mitigation" could be used to resolve project impacts if no critical habitat was designated.

Service response: Federal agencies are required to consult formally with the Service if they propose to authorize, fund, or carry out any activity that may affect the least Bell's vireo, wherever these birds are found and regardless of any critical habitat designation.

Through formal consultation with the Service, the Federal agency determines whether, and in what manner, it can carry out its action consistent with the "jeopardy" prohibition of section 7(a)(2). The traditional concept of mitigation does not control in the assessment of the likelihood of jeopardy. If the Service finds that the action is not likely to jeopardize the vireo, then project modifications are not required by section 7(a)(2). However, if it is determined that the action is likely to jeopardize the continued existence of the vireo, then reasonable and prudent alternatives to the proposal should be considered. Such alternatives, which satisfy the requirements of Section 7(a)(2), may also involve significant project modifications.

Comment 17: Several commenters requested that the Service prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) before issuing a critical habitat rule.

Service response: For the reasons set out in the NEPA section toward the end of this document, the Service takes the position that rules issued pursuant to section 4(a) of the Endangered Species Act, including critical habitat rules, do not require the preparation of an EIS.

To summarize the comments and data provided under the proposal, the Service received no data indicating that the status of the vireo is far healthier than previously thought, that there were "thousands of vireos" still breeding in California, or that large blocks of appropriate habitat can be found below flood control dams or in some other parts of California or Mexico. No data were presented contradicting the effects of cowbirds on the reproductive success of the vireos. A few hundred pairs of vireos in several dozen locations exist in California, with probably similar numbers in Baja California, Mexico.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the least Bell's vireo (*Vireo bellii pusillus*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the least Bell's vireo (*Vireo bellii pusillus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The least Bell's vireo is predominantly restricted to dense riparian habitat on its breeding range in California and northwestern Baja California. Over 95 percent of historic riparian habitat has been lost throughout its former breeding range in the Central Valley of California, which may have accounted for 60–80 percent of the original population. Similar habitat losses have also occurred throughout its remaining stronghold in southern California, and habitats are currently declining in Baja California as well (Wilbur 1980b). These widespread losses are mainly attributable to flood control and water development projects, agricultural development, livestock grazing, invasive exotic plants, off-road vehicles, and urban development resulting from rapidly expanding human populations. Despite growing concern at all levels of government for declining riparian vegetation, substantial amounts of riparian habitat continue to be lost each year.

In summary, with about 65 percent of the remaining United States population threatened by at least four major construction projects (see below) and the remaining 35 percent restricted to

small, isolated habitats vulnerable to a variety of imminent threats, the least Bell's vireo is becoming increasingly threatened by extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* As with other song birds (passerines), the least Bell's vireo has always been subject to nest predation. Unlike many other passerines, however, least Bell's vireos typically build their nests within about 40 inches (1 meter) of the ground, where they are accessible to a variety of terrestrial predators that prey on eggs or young (Wilbur 1980a; Salata 1981, 1983a). Male vireos often sing while on the nest, thereby potentially increasing predation rates by attracting predators. With the introduction of house pets and feral cats and with the surrounding of remnant breeding habitats by encroaching urban development, abnormally high predator densities may occur. In such situations, vireos undoubtedly face greater predation pressure than in larger, more natural habitats.

Recent multi-year studies by Greaves and Gray (unpublished reports) and Salata (1981, 1983a) quantified predation rates at the Santa Ynez River and Santa Margarita River populations, respectively. They found that about 40 percent of all nesting attempts along the Santa Ynez River failed because of predation and that about 30 percent failed because of predation along the Santa Margarita River. Predation rates of approximately 25 percent were noted during 1984 along the San Diego, Sweetwater, and San Luis Rey Rivers (Jones 1985).

D. *The inadequacy of existing regulatory mechanisms.* The least Bell's vireo is protected by both State of California and Federal laws. It is also protected under the land management plans of some local jurisdictions (e.g., zoning, parks). The Migratory Bird Treaty Act (16 U.S.C. 701–711) establishes provisions regulating the taking, possessing, transporting, and import of migratory birds, including all Bell's vireos. The vireo has not been subjected to any commercial activities. However, its habitat is not protected under those laws and is being incrementally destroyed and degraded. The Endangered Species Act offers additional possibilities for protection and management of this species' habitat.

E. *Other natural or manmade factors affecting its continued existence.* The effect of nest parasitism by the brown-headed cowbird has been greatly enhanced by anthropogenic factors, resulting in increased cowbird habitat and range and decreased vireo habitat. The brown-headed cowbird was rare in California prior to 1900, but expanded tremendously in both range and numbers (Garrett and Dunn 1981) as irrigated agriculture and animal husbandry increased (Wilbur 1980a). Cowbirds do not build their own nests but instead parasitize the nests of other bird species (i.e., lay their eggs in the nests of other species), usually to the detriment of the host birds' own eggs or young. The first record of nest parasitism on the least Bell's vireo was in 1907, after which reported incidences increased rapidly (Wilbur 1980a). The cowbird is not dependent upon the vireo, as it can use a large number of other species as host for its eggs. Vireo nests appear to be among the easiest to locate by cowbirds and may be favored, if present.

Recent studies by Greaves and Gray (unpublished reports) and Salata (1981, 1983a) have documented parasitism rates of between 20 and 47 percent from 1980 to 1982 along the Santa Ynez and Santa Margarita Rivers, respectively. Laymon (in litt.) suggests rates above 20% are probably detrimental to the vireo population's recruitment; at levels above 40% the local population may be expected to decline. Although the results of these studies do not indicate inordinately high parasitism rates compared to those of other common host species of brown-headed cowbirds, they do support the hypothesis that cowbird parasitism is significantly reducing least Bell's vireo reproductive success. During 1984 in a study of least Bell's vireo reproductive success along several rivers in San Diego County, Jones (1985) found a parasitism rate of 80 percent, a high rate that significantly affected vireo reproductive success.

Different rates would be expected at other breeding locales of least Bell's vireo, depending on an array of environmental factors. Considering the present widespread abundance of cowbirds throughout the historic range of the vireo, it appears that cowbird parasitism may greatly increase the probabilities of localized extinction to many of the small, vulnerable breeding populations. Further, depressed nesting productivity in the larger vireo breeding populations may: (1) Limit the opportunities (a) for population dispersal into unoccupied habitats or (b) to augment smaller populations and (2) may prevent founding pairs from successfully producing enough young to establish a new local population. An active cowbird control program by the Marine Corps on Camp Pendleton (Santa Margarita River), during April through July in 1983, is credited with increasing the vireo productivity within the study area from 104 fledglings per 100 breeding adults in 1982 to 143 fledglings per 100 breeding adults in 1983 (Salata 1983b).

The widespread habitat losses described above have fragmented remaining breeding populations into small, disjunct, widely dispersed subpopulations. Of the 46 localities currently known to support breeding populations, 34 support 4 or fewer territorial males, and only 7 sites support more than 10 breeding pairs. The 5 largest remaining populations, the Sweetwater River (46 territorial males), Prado Basin-Santa Ana River (14 territorial males), Santa Margarita River (85 territorial males), Santa Ysabel Creek (16 territorial males), and Santa Ynez River (26 territorial males), represent about 65 percent of the extant population in the United States; each is imminently threatened by a major urban development or water control project planned in the near future. Many of the smaller subpopulations are similarly threatened by a variety of projects associated with the increasing human population throughout the range of the vireo.

Biogeographic theories suggest that these small, remnant populations (accounting for about 35 percent of the total population) are more vulnerable to extirpation than several larger populations. In short, the smaller and more isolated a given local population, the more likely its chances of extinction. Given the high mortality rates of all small migratory songbirds, the significant threat posed by brown-headed cowbird parasitism (see above), and the site tenacity of the subspecies, localized extinctions are a high probability, even without natural or human-caused destruction of local habitats. In many instances, there may be no other vireo populations close enough or there may not be sufficient population recruitment at other breeding areas to repopulate extirpated populations in later years. Also, if local habitats are decimated for a year or two (e.g., by flooding such as occurred in southern California in 1978 and 1980), there may be no nearby habitat available to which vireos can disperse until the scoured riparian habitat regenerates. In this case, vireos may be forced into habitats less suitable to their nesting and foraging requirements, resulting in heightened mortality and reduced reproductive success.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in

determining to make this rule final. Based on this evaluation, the preferred action is to list the least Bell's vireo as endangered. Its greatly reduced distribution and small population size, loss of habitat, and substantial potential for habitat modification or loss from future development projects, indicate the species warrants endangered rather than threatened status. The bird is clearly in danger of becoming extinct throughout its range in the foreseeable future. A decision to take no action would exclude the least Bell's vireo from needed protection available under theEndangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent. The reasons for postponing the designation of critical habitat are given in the following section. Designation of critical habitat will be addressed in a subsequent **Federal Register** notice. Elsewhere in this issue of the **Federal Register** the Service has reopened the comment period on the proposed critical habitat of May 3, 1985 (50 FR 18968).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the involved species, or that critical habitat is not then determinable. The Service believes that a prompt determination of endangered status for the least Bell's vireo is essential. If the least Bell's vireo were only proposed, but not listed, it would be eligible only for the consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of the concerned Federal agencies or applicants for Federal permits. Therefore, in order to ensure that the full benefits of Section 7 and other conservation measures under the Act will apply to the least Bell's vireo, prompt determination of endangered status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information on economic impacts of designating critical habitat that was submitted during the comment period. However, because of the complexities and extent of the activities being assessed, the Service has not completed the evaluation. The Service today reopens the comment period on the critical habitat proposal in order to gather further data on economic impacts, boundaries, and precise habitat needs of the species in order to define more precisely the critical habitat of the vireo. The Service is in the process of performing the economic and other impact analyses required for a determination of critical habitat for the species, and plans to consider a final determination in the near future. The decision on designation of critical habitat must be made by May 3, 1987, pursuant to section 4(b)(6)(C)(ii) of the Act, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Critical habitat is not being designated for the vireo at this time.

A variety of Federal agencies have jurisdiction and responsibilities within vireo habitat, and Section 7 consultation might be required in a number of instances. At this point, known proposals that could require consultation include: modification of Gibraltar Reservoir on the Santa Ynez River (Army Corps of Engineers (CE) and U.S. Forest Service), a flood control project on the Santa Ana River (CE), a flood control project (CE), highway construction projects (Federal Highway Administration), urban development in wetlands at the Sweetwater Reservoir (CE), and a water project on the Santa Margarita River (Bureau of Reclamation and U.S. Marine Corps). These and other projects have the potential for significant adverse effects on the least Bell's vireo.

The Bureau of Reclamation and U.S. Marine Corps have coordinated with the Service concerning possible projects that may be authorized for the Santa Margarita River at Camp Pendleton. An interagency agreement has been established to provide a mechanism leading to the timely implementation of a conservation strategy for native flora and wildlife species at Camp Pendleton and their habitats in the Santa Margarita floodplain and estuary. This agreement has identified the least Bell's vireo and other listed species as important public trust resources to be conserved.

Controlled burning by various government agencies to reduce fuel loads in uninhabited areas may benefit the vireo, if done at the right time and in the proper manner. The Forest Service may have to consult on some of their controlled burning programs in areas where vireos are present.

In the case of highway projects in southern California, those that may affect the vireo are major bridge crossings of riparian habitat. Many similar crossings already exist in vireo habitat that do not appear to be substantial adverse influences on the vireo, although this needs further study. Each such future project may become the subject of a consultation to see what, if any, effects are likely. Only projects with Federal approval or funding are possible candidates for such consultations.

This rule brings sections 5 and 6 of the Endangered Species Act into effect with respect to the least Bell's vireo. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Fish and Wildlife Service would be able to grant funds (should they become available) to the State of California for management actions aiding the protection and recovery of the vireo.

Listing the least Bell's vireo as endangered allows for development of a recovery plan for this bird. Such a plan

will draw together the State, Federal, and local agencies having responsibility for conservation of the vireo. The recovery plan will outline an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate in their conservation efforts. Habitat Conservation Plans (HCPs) and other comprehensive plans, such as those being coordinated by the San Diego Assocation of Governments task force on the vireo, will be a part of and coordinated through the recovery plan process. The recovery plan will describe recovery priorities and estimate the cost of various tasks necessary to accomplish them. It will recommend appropriate functions to each agency and a time frame within which to complete them.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, etc.—see definitions at 50 CFR 17.3), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

The least Bell's vireo is not used for economic purposes, is not a commercial species, and is not legally hunted, sold, or traded. Only a few requests for taking permits are anticipated. This bird is presently protected under 50 CFR Parts 10 and 20 as a migratory bird.

The Service will review the least Bell's vireo to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). The Service's determination includes and applies to critical habitat rules, none of which in the past have been found to be major Federal actions under NEPA.

References Cited

American Ornithologists' Union. 1957. Check-list of North American birds. 5th edition. American Ornithologists' Union [Washington, D.C.] 691 pp.

Gaines, D. 1974. A new look at the nesting riparian avifauna of the Sacramento Valley, California. Western Birds 5:61–79.

Gaines, D. 1977. The status of selected riparian forest birds in California. Unpublished report to California Department of Fish and Game. 56 + viii pp.

Garrett, K., and J. Dunn. 1981. Birds of southern California; status and distribution. Los Angeles Audubon Society. 408 pp.

Goldwasser, S. 1978. Distribution, reproductive success and impact of nest parasitism by brown-headed cowbirds on least Bell's vireos. California Department of Fish and Game. Nongame Wildlife Investigations. Job IV–1.5.1. 27 pp.

Goldwasser, S., D. Gaines, and S. Wilbur. 1980. The least Bell's vireo in California: a de facto endangered race. American Birds 34:742–745.

Grinnell, J., and A. Miller. 1944. The distribution of the birds of California. Pacific Coast Avifauna 27. 608 pp.

Hamilton, T. 1962. Species relationships and adaptations for sympatry in the avian genus *Vireo*. Condor 64:40–68.

Jones, B. 1985. A report on the status of the least Bell's vireo on the San Diego, Sweetwater, and San Luis Rey Rivers, San Diego County, CA. Unpublished report. U.S. Fish and Wildlife Service, Laguna Niguel, CA, and San Diego County Fish and Game Commission. 52 pp.

Laymon, S. 1980. Winter brown-headed cowbird concentrations in the Central Valley, California: feasibility of trapping for population control and historical range changes of the species. Unpublished report. California Department of Fish and Game, Sacramento. 28 pp.

Salata, L. 1981. Least Bell's vireo research, Camp Pendleton Marine Corps Base, San Diego County, California. Unpublished report. Natural Resources Office, Camp Pendleton, CA. 28 pp.

Salata, L. 1983a. Status of the least Bell's vireo on Camp Pendleton, California. Unpublished report. U.S. Fish and Wildlife Service, Laguna Niguel, CA. 62 pp.

Salata, L. 1983b. Status of the least Bell's vireo on Camp Pendleton, California: report on research done in 1983. Unpublished report. U.S. Fish and Wildlife Service, Laguna Niguel, CA. 53 pp.

Wilbur, S. 1980a. Status report on the least Bell's vireo. Unpublished report. U.S. Fish and Wildlife Service, Portland, Oregon. 46 pp.

Wilbur, S. 1980b. The least Bell's vireo in Baja California, Mexico. Western Birds 11:129–133.

Author

The primary author of this final rule is Dr. Kathleen E. Franzreb, Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, California 95625 (916–978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 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 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Vireo, least Bell's	*Vireo bellii pusillus*	U.S.A. (CA), Mexico	Entire	E	228	NA	NA

Dated: April 29, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9936 Filed 5-1-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Critical Habitat Designation for the Endangered Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service gives notice that the comment period is reopened for 90 days to receive further comments concerning the proposed designation of critical habitat for the least Bell's vireo. The vireo has been listed as an endangered species as published in today's **Federal Register.** A final decision regarding designation of critical habitat will be made after all materials received by the Service have been evaluated.

DATE: Comments from all interested parties must be received by July 31, 1986.

ADDRESS: Comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

In today's **Federal Register,** the Service issues a final rule to list the least Bell's vireo (*Vireo bellii pusillus*) as an endangered species and afford it immediate protection under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). Due to the nature and extent of the threats faced by the least Bell's vireo, it is deemed to be essential to the conservation of the species that it be listed without further delay. As explained in the final rule, because of the complexity of the economic analysis that must accompany the designation of critical habitat, the large number of comments and data received, and the difficulty and significance of the issues pertaining to the proposed critical habitat designation, the Service has decided to defer a decision on the critical habitat designation. Section 4(b)(6)(C) of the Act allows the Service to extend the prescribed period for designation of critical habitat for up to one year: May 3, 1987, in this case. Accordingly, the Service reopens, for 90 days, the comment period on the proposed designation of critical habitat (May 3, 1985; 50 FR 18968) for the least Bell's vireo.

Because the comments previously submitted by all parties in 1985 on the proposed rule concerning critical habitat for this species will still be considered, there is no need for duplicate comments to be resubmitted during this comment period by any party. Comments made at past public hearings carry equal weight with written comments.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232 (503)/231–6131 or FTS 429–6131).

Authority

The authority for this action is the 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: April 29, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–9979 Filed 5–1–86; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 51, No. 85

Friday, May 2, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

16155-16280.....1
16281-16484.....2

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
246.....16155
272.....16281
273.....16281
925.....16285
1435.....16285
Proposed Rules:
911.....16347

8 CFR
238.....16288

12 CFR
Ch. VII.....16292
556.....16288
611.....16291

13 CFR
309.....16292
Proposed Rules:
121.....16176

14 CFR
39.....16155, 16294
71.....16295
75.....16295
Proposed Rules:
39.....16347

15 CFR
379.....16296

18 CFR
271.....16157

19 CFR
101.....16158
115.....16159
178.....16159

20 CFR
404.....16166

21 CFR
176.....16167
330.....16258
331.....16258
332.....16258
357.....16258

24 CFR
882.....16296

26 CFR
1.....16297, 16298
53.....16300
54.....16300
141.....16300
301.....16300
602.....16298, 16300

26 CFR
Proposed Rules:
1.....16348

27 CFR
5.....16167

28 CFR
21.....16171

30 CFR
Proposed Rules:
250.....16348
256.....16348

31 CFR
306.....16174

32 CFR
706.....16174

33 CFR
117.....16306
118.....16306

36 CFR
Proposed Rules:
62.....16349

38 CFR
21.....16314, 16317
Proposed Rules:
4.....16350

40 CFR
Proposed Rules:
180.....16178
260.....16422
264.....16422
265.....16422
270.....16422
Proposed Rules:
65.....16353

42 CFR
433.....16318

43 CFR
3.....16319

46 CFR
Proposed Rules:
572.....16354

47 CFR
Proposed Rules:
1.....16321
31.....16178
73.....16322, 16324
Proposed Rules:
73.....16357-16360

48 CFR

Proposed Rules:
52 16462

49 CFR

513 16175
553 16175
571 16325
Proposed Rules:
192 16362
1135 16363

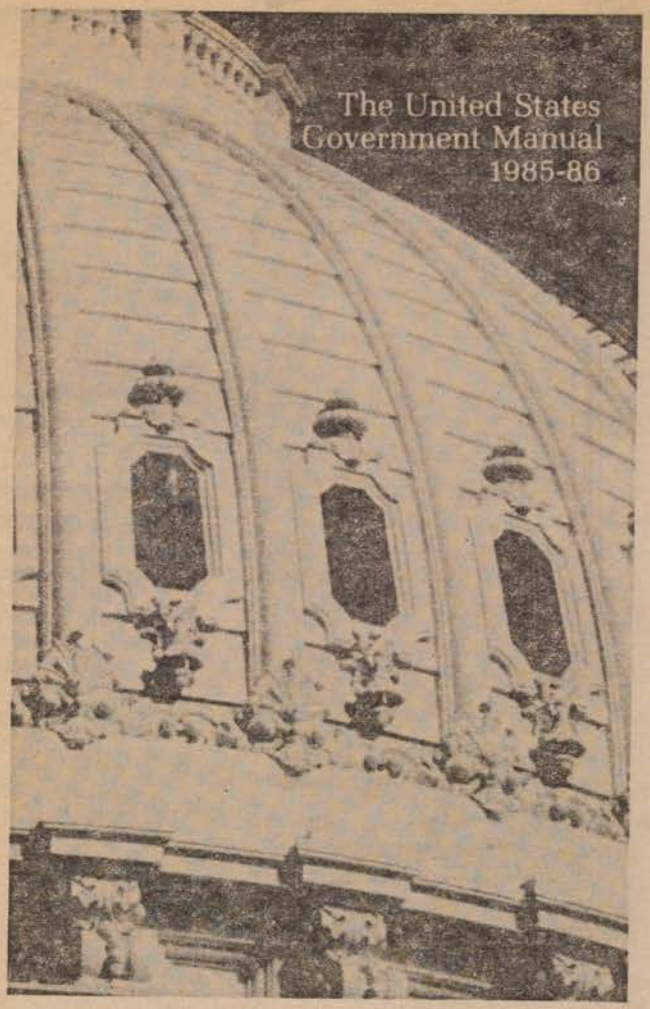
50 CFR

17 16474
301 ..... 16466, 16471
Proposed Rules:
17 ..... 16363, 16483
216 16365

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 29, 1986.



Order Now!

The United States Government Manual 1985/86

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$15.00 per copy

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $ _____

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Customer's Telephone Nos.

Area Code Home Area Code Office

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1985/1986 at $15.00 per copy. Stock No. 022-003-01118-8

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

(Rev.9-1-85)