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Friday
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Parts 9007 and 9038

[Notice 1985-1]

Repayments by Publicly Financed Presidential Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; Second Transmittal to Congress.

SUMMARY: The Commission announces the resubmission to Congress of revised regulations governing certain repayments by publicly financed Presidential candidates. 11 CFR Parts 9007 and 9038. These regulations were first transmitted to Congress on August 17, 1984. *See* 49 FR 33225 (August 22, 1984). However, thirty legislative days had not expired when Congress adjourned on October 12, 1984. The Commission is retransmitting these regulations prior to final promulgation. Further information is provided in the supplementary information that follows.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel (202) 523-4143 or Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: On August 17, 1984, the Commission transmitted to Congress revised rules governing the formula used to determine repayments by Presidential candidates receiving public financing under Title 26. *See* 49 FR 33225 (August 22, 1984). These regulations had not been before Congress for 30 legislative days prior to its adjournment on October 12, 1984. Accordingly, the Commission resubmitted these rules and their explanation and justification to Congress on March 5, 1985.

Explanation and Justification

On May 15, 1984, the U.S. Court of Appeals for the D.C. Circuit held that repayments by publicly-financed Presidential primary candidates for non-qualified campaign expenses should be "limited to the amount of federal funds that the Commission reasonably determined were spent" by the candidates for such purposes. *Kennedy for President Committee et al.* v. *Federal Election Commission*, 734 F.2d 1558 (D.C. Cir. 1984); *Reagan for President Committee* v. *Federal Election Commission*, 734 F.2d 1569, 1570 (D.C. Cir. 1984). In accordance with the court's order, the Commission has revised its regulations, which currently require repayment of the total amount spent on non-qualified campaign expenses. *See*, 11 CFR 9007.2(b)(2) and 9038.2(b)(2) (1983). The revised regulations implement a pro-rata formula based on the proportion of federal funds to total funds received by the candidate. The amount of any repayment sought would then be a similar proportion of the total amount spent on non-qualified campaign expenses. In the case of Presidential primary candidates, the proportion of federal funds certified will be determined as of the candidate's date of ineligibility. In the general election, a pro-rata formula will only be used for major party candidates who had received private contributions to make up a deficiency in the Fund and for minor or new party candidates receiving partial Federal funding. The use of such formulas is consistent with the court's opinion, which does not require a mathematically precise determination of the amount of the Federal funds spent improperly but only a reasonable determination of the amount of Federal matching funds so used. *Kennedy supra* at 1562. Moreover, the revisions are limited to repayment determinations under 26 U.S.C. 9007(b)(4) and 9038(b)(2), as those were the only types of repayment determinations addressed in the *Kennedy* and *Reagan* decisions.

To demonstrate how these formulas will operate, the Commission has prepared two examples of hypothetical repayment determinations under 26 U.S.C. 9038(b)(2). Although the examples deal with repayments by Presidential primary candidates, they may be analogized to repayments by general election candidates as the issues presented in both cases are similar. The examples cover hypothetical repayments by candidates in a surplus and in a deficit position.

Illustration No. 1: Surplus Candidate

Assumptions

Date of ineligibility (DOI): 7/19/84
Surplus on DOI: $1,000,000
Matching funds received through DOI: $8,000,000 (net)
Total deposits through DOI: $20,000,000
Non-qualified campaign expenses incurred pre-DOI: $100,000 (in excess of New Hampshire limit)
Non-qualified campaign expenses incurred post-DOI: $25,000 (purchase of 1984 Corvette)

1. Calculate 26 U.S.C. 9038(b)(3) ratio and determine amount of 26 U.S.C. 9038(b)(3) surplus repayment.

The Audit staff verified the Candidate's NOCO statement (as of 7/19/84) and reached agreement with the Treasurer as to the amount of the surplus at DOI (i.e., $1,000,000). The Audit staff then calculated the 26 U.S.C. 9038(b)(3) ratio using figures developed by reviewing reports and records of the Committee. The ratio calculated was (40%)

$$\frac{\$8,000,000}{\$20,000,000}$$

Applying this ratio (40%) to the verified surplus ($1,000,000),[1] the 26 U.S.C. 9038(b)(3) repayment amount becomes $400,000. Since some estimates (for winding down costs) were used to calculate the surplus, adjustments to the amount repayable may be appropriate as a result of audit fieldwork updates.

2. Calculate 26 U.S.C. 9038(b)(2) ratio and determine amount of 26 U.S.C. 9038(b)(2) repayment for non-qualified campaign expenses.

In order to determine the repayment for $100,000 in expenditures in excess of the New Hampshire state limit, several calculations and adjustments were

[1] The Treasurer included $25,000 in accounts payable for expenses chargeable in the New Hampshire limit and arrived at a calculated surplus of $975,000. The Audit staff excluded the $25,000 in accounts payable for non-qualified campaign expenses, thus making the surplus $1,000,000.

performed by the Audit staff. First, the ratio had to be calculated. In this case, the Treasurer had workpapers supporting his calculation of the 26 U.S.C. 9038(b)(2) ratio and the Audit staff verified his figures. The Treasurer's ratio was 38.7755%

$$\frac{\$7,600,000}{\$19,600,000}$$

The Treasurer reasoned that since $400,000 was to be repaid via the 26 U.S.C. 9038(b)(3) repayment, actual matching funds certified (NET) was equal to matching funds certified through DOI ($8,000,000) less the $400,000 to be repaid. A similar adjustment was made to the denominator. The Audit staff explained that for purposes of calculating the 26 U.S.C. 9038(b)(2) ratio, repayments pursuant to 26 U.S.C. 9038(b)(1) and (b)(3) did not come into consideration.[2] The 26 U.S.C. 9038(B)(2) ratio was calculated to be 40%

$$\frac{\$8,000,000}{\$20,000,000}$$

Since the $100,000 ($75,000 paid and $25,000 yet to be paid) were the only non-qualified expenses incurred prior to date of ineligibility, the Audit staff simply multiplied 40% times $100,000 to arrive at the amount ($40,000) repayable pursuant to 26 U.S.C. 9038(b)(2).

With respect to the review of post-DOI disbursements, the Audit staff noted a $25,000 payment for purchase of an automobile made on 8/2/84. It was also noted that the Treasurer had properly: (1) Not included this amount for purposes of inclusion in the NOCO statement and (2) considered this expense to have been defrayed with excess campaign funds pursuant to 2 U.S.C. 439a. (The Committee's calculated residual funds after all repayments and qualified expenses were satisfied, amounted to approximately $560,000).

In summary, the total repayment requested would have been as follows:

26 U.S.C. 9038(b)(3):

$$\frac{\$8,000,000}{\$20,000,000} \times \$1,000,000 = \$400,000$$

26 U.S.C. 9038(b)(2):

$$\frac{\$8,000,000}{\$20,000,000} \times \$100,000 = \$40,000$$

Total Repayment—$440,000

Illustration No. 2: Deficit Candidate

Assumptions

Date of ineligibility (DOI): 3/20/84

Matching Funds Certified Through DOI: $3,000,000[3]

Total Contributions Deposited Through DOI: $6,000,000

Amount of Non-Qualified Expenses incurred Pre-DOI:

Undocumented	$50,000
Excess Iowa	25,000
Total 26 U.S.C. 9038(b)(2) incurred Pre-DOI	75,000

Amount of Non-Qualified Expenses incurred Post-DOI:

Non-qualified type	Date incurred	Date paid	Amount paid
Non-campaign related (Convention expenses)	June 1, 1984	July 1, 1984	$20,000
Transfer to National Party	May 4, 1985	May 4, 1985	5,000
Total Post-DOI Non-Qualified			25,000

Amount of Last Matching Fund Payment: $1,750 on 2/5/85

1. Calculate 26 U.S.C. 9038(b)(2) ratio and resultant repayment amount.

During initial fieldwork, the Audit staff reviewed workpapers prepared by the Treasurer concerning the Committee's NOCO position and 26 U.S.C. 9038(b)(2) repayment situation. The Audit staff verified the Committee's NOCO position (entitlement). Several differences were noted between the Committee Treasurer's calculations and those performed by the Audit staff.

The Treasurer did not include the $300,000 matching payment received on 3/23/84 in computing the 26 U.S.C. 9038(b)(2) ratio. This appeared to be an oversight on the Treasurer's part. The Audit staff pointed out that the 26 U.S.C. 9038(b)(2) ratio (both numerator and denominator) is to include the amount of matching funds *certified* through the date of ineligibility, whether or not received by that date. Hence, the correct ratio for 26 U.S.C. 9038(b)(2) repayment purposes was

$$\frac{\$3,000,000}{\$3,000,000 + \$6,000,000}$$

or 33.3333%;

not the 31.0345% or

$$\frac{\$2,700,000}{\$2,700,000 + \$6,000,000}$$

as originally calculated by the Treasurer. Applying the 33.3333% ratio to the amount of non-qualified campaign expenses incurred prior to the date of ineligibility ($75,000), the repayment amount was $25,000.

The Audit staff verified the figures contained on the Treasurer's NOCO workpapers. It was noted that the Treasurer has included $25,000 in non-qualified expenses as a payable on her NOCO statement. This amount represented expenses for materials and services used in February 1984 which had not been paid and are included in the pre-ineligibility non-qualified expenses included above. The Audit staff explained that, if permitted, inclusion of the $25,000 in non-qualified campaign expenses could result in an additional $25,000 in matching fund entitlement.

During the audit fieldwork update, the Audit staff reviewed expenses incurred after the date of ineligibility, the updated NOCO statements sumbitted, and the liquidation of matching fund payments received after the date of ineligibility. It was noted that the Treasurer included on her NOCO statement, $20,000 in expenses relating to the candidate's and his staff's travel, food and lodging costs at the nominating convention. The Audit staff pointed out two problems with the Treasurer's approach.

First, the $20,000 in convention-related expenses were not valid winding down costs and, therefore, could not be defrayed with matching funds. The

[2] There is no adjustment for repayments under 26 U.S.C. 9038(b)(1) or (b)(3) because the repayment formula for 9039(b)(2) is based on the amount of funds certified to the candidate and therefore available to defray non-qualified campaign expenses. This is so even if the Commission may later determine that the candidate was not entitled to a portion of the funds or that the candidate had a surplus.

[3] Actual matching funds received through DOI totaled $2,700,000; however, a certification for $300,000 was approved on 3/18/84, with the resulting payment not received until 3/23/84.

Audit staff informed the Treasurer that the $20,000 payment was a non-qualified campaign expense subject to repayment pursuant to 26 U.S.C. 9038(b)(2). The Treasurer agreed.

Second, for the same reasons that the $25,000 in pre-DOI non-qualified campaign expenses could not be included on the NOCO statement, the $20,000 in post-DOI non-qualified campaign expenses also could not be included.

Thus, the entitlement as calculated by the Treasurer was reduced by $20,000[4] and the 26 U.S.C. 9038(b)(2) ratio was applied to the $20,000 which resulted in a repayment amount of $6,666.67 for convention expenses. It should be noted that the $5,000 transfer (dated 5/4/85) was made after all matching funds received had been disposed of and thus, this transfer was considered to have been made using non-federal monies.

The total 26 U.S.C. 9038(b)(2) repayment is $31,666.67, comprised of the following:

Pre-DOI non-qualified campaign expenses ($75,000 × 33.3333%)	$25,000.00
Post-DOI non-qualified expenses ($20,000 × 33.3333%)	6,666.67
Total 26 U.S.C. 9038(b)(2) Repayment	31,666.67

At the close of follow-up fieldwork, the Treasurer inquired concerning the possible impact of settling a $500,000 debt for $50,000 in the near future. The Audit staff advised her of the Commission's debt settlement procedures and informed the Treasurer that all NOCO statements filed carried this debt at $500,000. Should the debt be settled for less, it was the Commission's policy to recalculate entitlement based on the $50,000 settlement amount, and seek a 26 U.S.C. 9038(b)(1) repayment, if appropriate.

Statutory Authority

(26 U.S.C. 9007, 9038)

List of Subjects 11 CFR Parts 9007 and 9038

Campaign funds, Administrative practice and procedure, Political candidates.

PART 9007—[AMENDED]

11. CFR Part 9007 is amended by revising §§ 9007.2(b)(2)(i) introductory text, and (b)(2)(ii)(B), (C) and (D); and adding (b)(2)(iii) as follows:

[4] To the extent the candidate's entitlement was inflated by this amount, a repayment determination would also be made under 26 U.S.C. 9038(b)(1).

§ 9007.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (A) through (C) below, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

* * * * *

(ii) * * *

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s), or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal Law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal funds, as of December 31, of the Presidential election year.

* * * * *

PART 9038—[AMENDED]

11 CFR Part 9038 is amended by revising § 9038.2(b)(2)(i) introductory text, adding (b)(2)(iii) and revising (b)(3) as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) The Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in (A)–(C) below:

* * * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

(3) *Failure to Provide Adequate Documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

* * * * *

Dated: March 5, 1985.

John Warren McGarry,

Chairman.

[FR Doc. 85-5591 Filed 3-7-85; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Director, Center for Devices and Radiological Health

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority on medical devices and electronic products to add new delegations to the Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority to redelegate the authority to CDRH officials to issue notices relating to the approval, denial of approval, or withdrawal of approval of premarket approval applications (PMA's) or supplemental PMA's and to issue notices of the availability of approved variances, and amendments or extensions thereof, for electronic products. This document amends § 5.53 *Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices* (21 CFR 5.53) and § 5.86 *Variances from performance standards for electronic products* (21 CFR 5.86) to delegate

authority to the Director and Deputy Director, CDRH, to issue such notices.

All notices pertaining to highly visible, controversial, or sensitive matters, or which involve granting or denial of a hearing, will be reviewed and issued by the Office of the Commissioner.

All documents will continue to be reviewed and cleared by the Office of General Counsel.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. By adding new § 5.53(c), to read as follows:

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

* * * * *

(c) The Director and Deputy Director, CDRH, for medical devices assigned to their organization, are authorized to issue notices to announce the approval, disapproval, or withdrawal of approval of a device, and to make publicly available a detailed summary of the information on which the decision was based, under sections 515 (d), (e), and (g) and 520(h)(1) of the act.

2. By revising § 5.86, to read as follows:

§ 5.86 Variances from performance standards for electronic products.

The Director and Deputy Director, Center for Devices and Radiological Health, are authorized to grant and withdraw variances, and issue notices of availability of any approved variance or any amendment or extension thereof, from the provisions of performance standards for electronic products established in Subchapter J of this chapter.

Effective date. This regulation shall become effective March 8, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5534 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 5

Delegations of Authority and Organization; Associate Commissioner for Health Affairs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Associate Commissioner for Health Affairs from the Commissioner of Food and Drugs. The authority being added is under section 156 of Title 35 of the United States Code (35 U.S.C. 156) and pertains to patent term restoration.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations under Part 5 to delegate to the Associate Commissioner for Health Affairs the authorities to perform the functions that have been delegated to the Commissioner under 35 U.S.C. 156, except for the holding of informal hearings pursuant to 35 U.S.C. 156(d)(2)(B)(ii).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies); Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended by adding new § 5.27, to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

§ 5.27 Patent term extensions for human drug products, medical devices, and food and color additives.

The Associate Commissioner for Health Affairs is authorized to perform the functions delegated to the Commissioner under section 156 of Title 35 of the United States Code (35 U.S.C. 156), except for the holding of informal hearings pursuant to 35 U.S.C. 156(d)(2)(B)(ii).

Effective date. March 8, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5544 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 73

[Docket No. 84C-0135]

Poly (Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additive for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of coloring contact lenses of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) to produce tinted contact lenses. This action responds to a petition filed by Ciba Vision Care.

DATES: Effective April 9, 1985; objectives by April 8, 1985.

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

FOR FURTHER INFORMATION CONTACT: Tom C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** of June 6, 1984 (49 FR 23455), FDA announced that a color additive petition (CAP 4C0183) had been filed by Ciba Vision Care, P.O. Box 105069, Atlanta, GA 30348, proposing that Part 73 (21 CFR Part 73) be amended to provide for the safe use of Reactive Blue

No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[(3-[(2-(sulfooxy)ethyl]sulfonyl]phenyl]amino]-, disodium salt] (CAS Reg. No. 2580-78-1) chemically bonded to the lens polymer to produce permanently tinted contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 376).

The colored polymeric reaction product that is the subject of this petition is formed when the dye is bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lense to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.

Under the Medical Device Amendments of 1976 (Pub. L. 94-295), a color additive for use in a medical device is subject to the listing requirements when the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act). As explained in the Federal Register of January 4, 1984 (49 FR 372), the polymeric reaction products of bonding reactive dye like Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) are called "poly(hydroxyethylmethacrylate)-dye copolymers" in § 73.3121 (21 CFR 73.3121). These reaction products are color additives within the meaning of section 201(t) of the act (21 U.S.C. 321(t)) because they are substances made by a process of synthesis or similar artifice, and because they are capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. For the color additive considered here, Reactive Blue No. 19 is merely a starting material. In the reaction process that occurs in bonding the reactive dye to the poly(hydroxyethyl methacrylate), the reactive dye ceases to exist as a separate entity.

The use of the poly(hydroxyethyl methacrylate)-dye copolymers as color additives in contact lenses is subject to regulation under section 706(a) of the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day, each day, for 1 year or more. These color additives accordingly will come in direct contact with the body for a significant period of time. Consequently, the use of the color additive presented in the petition now before the agnecy is subject to the statutory listing requirement.

Safety Evaluation

The petitioner submitted various toxicity data to establish that the color additive created by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) is safe for use in contact lenses. In a primary ocular irritation study with extracts of lens material containing the color additive, and in a 21-day ocular irritation study with contact lenses tinted with the color additive, both of which were done in rabbits, neither the lenses containing the color additive nor the extracts of the colored lens material caused ocular irritation.

The agency has also reviewed data regarding the toxicity of potential impurities, such as unbound reactive dye, remaining in the lens. Because the reactive dye has a lower molecular weight than the polymeric color additive, it would be more readily absorbed into the body than the color additive and would thus be expected to show a greater toxic effect. FDA has concluded that, as a worst case, any material migrating from the color additive in the lens would pose a safety concern no greater than if the reactive dye was placed in the lens unbound, and all migrated into the eye over a 1-year period. The agency concludes, based upon the information submitted in the petition, that a maximum of 34.5 micrograms of reactive dye would be present in each lens. Therefore, the estimated worst cause exposure from two lenses would be 180 nanograms per day for both eyes.

The petitioner conducted cytotoxicity studies in which serial dilutions of the reactive dye were applied directly to L-929 mouse fibroblast cells. No toxic effect was seen at a concentration 4,600 times the concentration that would be in the eyes if 180 nanograms migrated into the eyes per day.

Conclusion

Based on the data in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction product formed by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) for coloring contact lenses, and that this color additive is suitable for its intended use. The agency, therefore, is amending § 73.3121 by adding Reactive Blue No. 19 to the list of reactive dyes in paragraph (a).

In addition, based on the relevant data, FDA concludes that the safety margin for use of this color additive is large enough to rule out any need for imposing a limitation on the amount of the additive that may be present on the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used. Finally, on the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additive is not necessary for the protection of the public health.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 73 is amended in § 73.3121 by removing the word "and" before, and the period at the end of, paragraph (a)(4) and by adding new paragraph (a)(5) to read as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers

(a) * * *: and (5) Reactive Blue No. 19 [2-anthracene-sulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[(3-[(2-(sulfooxy)ethyl]sulfonyl]phenyl]amino]-, disodium salt] (CAS Reg. No. 2580-78-1).

* * * * *

Any person who will be adversely affected by the foregoing regulation may, at any time on or before April 8,

1985, file with the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: April 9, 1985.

(Secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5549 Filed 3-5-85; 11:54 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 126 and 160

[CGD 84-039]

Radioactive Materials

Correction

In FR Doc. 85-5176 beginning on page 8612 in the issue of Monday, March 4, 1985, make the following corrections: On page 8614, in the first column, in paragraph 4, in the first line, "§ 126.203" should read "§ 160.203"; also, the heading "**§ 126.203 Definitions.**" below paragraph 4, should read "**§ 160.203 Definitions.**"

BILLING CODE 1505-01-M

33 CFR Part 165

[COTP LA/LB-85-03]

Safety Zone, Santa Cruz Island

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a safety zone in the vicinity of Santa Cruz Island. Tests of submerged and semi-submerged vessels will be conducted during a four month period. There will also be placement of fixed underwater sound systems making transit, anchoring or fishing hazardous. Limiting access to this area will serve to protect vessels and sensitive underwater gear.

DATES: This regulation becomes effective on February 28, 1985 and expires on June 1, 1985.

ADDRESS: Commanding Officer, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. The comments will be available for inspection and copying at the Port Operations Department, U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant John A. Turner, U.S. Coast Guard, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach (213-590-2215).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest. A safety zone already in effect completely excludes all vessels from the regulated area. This rule amends that zone to allow limited access on an individual basis resulting in more vessels being allowed to use the area when operations do not require exclusion. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this regulation are Lieutenant John A. Turner, U.S. Coast Guard, Port Operations Department, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach, project officer; Lieutenant Joseph R. McFaul, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

At intermittent times during the months of February, March, April and May, tests of submerged and semi-submerged vessels will take place in the waters off Santa Cruz Island. There will be suspended hydrophone arrays in the water column and test vessels may not be visible making transit of the area hazardous especially at night. Tests will be conducted as meteorological and oceanographic conditions permit. The area will be patrolled as needed by Coast Guard cutters and vessels approaching the safety zone should follow the directions of the Coast Guard cutter. In addition vessels may seek advance clearance from the Coast Guard Marine Safety Office to enter this area. The Marine Safety Office will issue clearances to vessels. The owner can call the Coast Guard, using the clearance, at least twenty-four hours in advance of the anticipated need to enter the safety zone. The Coast Guard will inform the vessel's owner if permission to enter the safety zone can be granted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation:

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by removing § 165.T11-02 and adding § 165.T-11-71 to read as follows:

§ 165.T-11-71 Santa Cruz Island.

(a) A safety zone is established to include all waters enclosed within lines drawn from the following points: beginning from a point on land located approximately at Latitude 33-57.9 N., Longitude 119-42.6 W., then due south to a point on the territorial sea located approximately at Latitude 33-54.9 N., Longitude 119-42.6 W., then following the limit of the territorial sea in an easterly direction to a point approximately located at Latitude 33-56.2 N., Longitude 119-35.5 W., then due

north to a point on land located approximately at Latitude 33–59.2 N., Longitude 119.35.5 W., then returning along the shore to the beginning point.

(b) No person may swim, skin dive or scuba dive in the waters within the safety zone without prior permission of the Captain of the Port.

(c) No vessel may navigate, transit, fish, anchor or drift in the waters within the safety zone without prior permission of the Captain of the Port.

(d) Any vessel within the zone shall follow the directions of the patrolling Coast Guard cutter. If instructed to leave, the vessel will do so immediately.

(e) Vessels may obtain a numbered clearance from the Marine Safety Office to enter the zone at times when operations permit. Any vessel may request, at least 24 hours in advance, permission to enter the area using the clearance. The Captain of the Port will grant permission, as operations permit, on a daily basis. Any person interested in obtaining permits should contact on of the following Coast Guard units for details:

(1) Port Operations Department, Coast Guard Marine Safety Office Los Angeles/Long Beach, Phone: (213) 590–2315

(2) Coast Guard Station Channel Island, Harbor Oxnard, California, Phone: (805) 985–9822

(3) Coast Guard Marine Safety Detachment, Santa Barbara, California, Phone: (805) 962–7430

(f) This regulation is effective on 25 February 1985 and remains continuously in force until 1 June 1985.

(33 U.S.C. 1225, 1231, 49 CFR 1.46; and 33 CFR 165.3)

Dated: February 25, 1985.

L.E. Beaudin,

Captain, U.S. Coast Guard, Captain of the Port, U.S. Coast Guard.

[FR Doc. 85–5614 Filed 3–7–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–3–FRL–2793–1]

District of Columbia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the District of Columbia's Application for Final Authorization.

SUMMARY: The District of Columbia has applied for Final Authorization under the authority of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the District's application and has reached a final determination that the District's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the District to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the District of Columbia shall be effective at 1:00 pm on March 22, 1985.

FOR FURTHER INFORMATION CONTACT: Wayne Naylor, Program Manager, State Programs Section (3HW31), U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597–3884.

SUPPLEMENTARY INFORMATION: .

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal and other State programs, and (3) provide for adequate enforcement (section 3006(b) of 42 U.S.C. 6926(c)).

On August 6, 1984, the District of Columbia submitted a complete application to obtain Final Authorization to administer the RCRA program. On November 26, 1984, EPA published a tentative decision announcing that the District's hazardous waste program would satisfy all of the requirements necessary for Final Authorization. Further background information appeared in EPA's tentative determination notice (Vol. 49, No. 288 FR 46443, November 26, 1984). Along with the tentative determination, EPA announced the availability of the District's application for public comment and a hearing was scheduled. The public hearing was not held as scheduled on December 27, 1984 since neither EPA nor the District received significant interest in holding the hearing. Therefore, EPA has determined that the District's hazardous waste program satisfies all necessary requirements for Final Authorization.

Decision

I conclude that the District's application for Final Authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the District of Columbia is granted Final Authorization to operate its hazardous waste programs subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). The District now has the responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the HSWA. The District also has the primary enforcement responsibility, although EPA maintains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Prior to the HSWA ameding RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities 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 timeframes. New Federal requirements did not take effect in the authorized State until the State adopted the requirements as State law.

Any District requirement that is more stringent than an HSWA provision remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable requirements in the District. (The District is not being authorized for any requirement implementing the HSWA.)

EPA will be publishing a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

EPA Region III and the District are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA contains some language that does not reflect the provisions of the HSWA and will be revised to reflect EPA's and the District's respective responsibilities under the new Federal/State regulatory scheme.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the District's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the District. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C 6912(a), 6926, and 6974(b).

Dated: February 14, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-5581 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6589

[NM 42705, NM 42706, NM 42707]

NM; Public Land Order 6459; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will correct an error in the land description in Public Land Order 6459 of August 16, 1983.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline Brown, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, 505-988-6635.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order 6459 of August 16, 1983, in FR Doc. 83-24687 published at page 40725 in the issue of September 9, 1983, is corrected as follows: "On page 40725, second column, the last line of the land description reading "T. 30 S., R. 21 W." should read "T. 30S., R. 22W."

Robert N. Broadbent,

Assistant Secretary of the Interior.

February 28, 1985.

[FR Doc. 85-5475 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 52, 53, 54, 58, 63 and 162

[CGD 81-079]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME S, E, A and H Symbol Stamps for Power and Heating Boilers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations replace the current Coast Guard requirements for plan approved and shop inspection of boilers with requirements that boilers be inspected and stamped in accordance with the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code. These regulations bring Coast Guard requirements for boilers in line with current industry practice and take maximum advantage of an industry safety standard which is recognized throughout the world and an inspection system already in existence. Several boiler and pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans will minimize the time needed for Coast Guard pre-installation inspections.

EFFECTIVE DATE: These rules become effective May 7, 1985.

ADDRESSES: A copy of the final evaluation may be obtained from Commandant (G-CMC/44), (CGD 81-079), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Howard L. Hime, Office of Merchant Marine Safety, (202) 426-2160.

SUPPLEMENTARY INFORMATION: On August 18, 1983 the Coast Guard published a proposal in the **Federal Register** (48 FR 37441) concerning these regulations. Interested persons were given an opportunity to submit written comments and 12 comments were received. Two of the comments have been adopted and the regulations have been changed to reflect these comments. These changes to the regulations are discussed under the Specific Comments section below.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard Hime, Project Manager, Office of Merchant Marine Safety, and Lieutenant Commander William B. Short, Project Attorney, Office of Chief Counsel.

Discussion of Comments

General

1. One commenter objected to the proposed regulations citing the lack of requirements for an independent review of the design and that the entire design, construction, and inspection would be under the control of persons not required to have any marine experience. Since 1968, Coast Guard regulations have incorporated the design, construction, and inspection requirements of the ASME Code, modifying the requirements where necessary to account for the marine environment. These regulations extend the adoption of the ASME Code to include certification of boiler plans by a registered professional engineer, inspection by an ASME authorized inspector, and stamping by an ASME accredited manufacturer. Independent review is retained by the requirement for the plans to be certified by a registered professional engineer and submitted to the Coast Guard for review. During the review, those aspects of the boiler design which are peculiar to the marine environment will be analyzed to assure compliance with the regulations. Further, the marine inspector at the shipyard will inspect the boiler to assure compliance with the regulations. The commenter further stated that there is no provision in the proposed rule change for the Coast Guard to receive a copy of the Manufacturer's Data Report Forms. Sections 52.01-145 and 53.10-15 require these forms to be made available to the marine inspector for review.

2. One commenter suggested that certification by The American Bureau of Shipping (ABS) be included as an alternative to ASME inspection and stamping of boilers. This suggestion was not adopted since ABS is permitted to

inspect boilers and pressure vessels under the ASME Code through it wholly owned subsidiary, The ABS Boiler Marine Insurance Company.

3. One commenter suggested that boilers be registered with the National Board of Boiler and Pressure Vessel Inspectors and the Manufacturer's Data Report Forms be filed with them to provide a permanent location for future retrieval. This suggestion was not adopted. Manufacturer's Data Report Forms are required to be made available to the marine inspector for review at time of boiler installation. This provides sufficient information to determine compliance with the regulations. Further, the American Bureau of Shipping and other classification societies maintain extensive files on vessels they class. This information can be retrieved if required for future alterations or repairs to the boilers.

4. One comment was received from another government agency which expressed concern that the use of the term "marine platform" in paragraph 1 of the preamble in the Notice of Proposed Rulemaking (NPRM) was too vague and could be interpreted to apply to marine structures outside the Coast Guard's jurisdiction. As stated in paragraph 1 and 4 of the NPRM, these regulations apply only to vessels certificated by the Coast Guard. Taken in the context of the paragraph, the term "marine platform" was used as a generic phrase to indicate that additional forces act on boilers mounted on floating supports rather than stationary foundations. There was no intent to imply that the regulations applied to items outside the Coast Guard's jurisdiction.

5. One commenter suggested that the regulations be extended to require safety valve repairs by a facility that is certified by and holds the "VR" stamp from the National Board of Boiler and Pressure Vessel Inspectors. This suggestion was not adopted. § 59.01–5 requires safety valve repairs to be approved by the Officer in Charge, Marine Inspection (OCMI). Accordingly, repairs made by facilities holding the "VR" stamp may be permitted as well as other facilities which can demonstrate to the satisfaction of the OCMI that they are capable of repairing safety valves.

6. One commenter questioned the savings for the manufacturers claimed in the Draft Evaluation. The commenter stated that, since design review and shop inspection would still be performed, the cost to the manufacturer should be the same regardless of who performs these functions. As stated in the Draft Evaluation, much of the cost incurred by the manufacturer for Coast Guard plan approval and shop inspection is a result of the additional time required for the Coast Guard to perform these functions. Due to limited resources, Coast Guard plan approval takes from four to six weeks. Further, several submittals may be required before all necessary information is obtained and the boiler plans are accepted. Also, the manufacturer's shop may be located a hundred or more miles from the nearest marine inspector resulting in costly delays during fabrication. These costs are greatly reduced by the use of registered professional engineers who may be in the employ of the manufacturer and ASME authorized inspectors who make routine visits to the manufacturer's shops. Since many marine boilers are presently stamped with the appropriate ASME symbol, no additional inspection costs are incurred for these boilers as a result of these regulations.

Specific Comments

Nine comments received related to specific sections of the proposed rules. These comments are discussed below. The specific sections of the regulations to which the comments apply are identified and discussed in ascending order.

1. *Section 50.20–1*—One commenter noted that the proposed revision to § 50.20–1 eliminated the requirement for boiler plans to be approved while § 63.05–5(a) requires plans for boiler automatic control systems to be submitted for approval in accordance with § 50.20–1. This confusion has been eliminated. Section 50.20–1 is revised to retain the requirement that plans for boiler automatic controls be submitted for approval.

2. *Section 50.20–1(b)*—One commenter questioned the need to have boiler plans submitted for review. The plans are required to be submitted because they contain vital information necessary to assure that steam piping and other equipment are adequately designed for the boiler steam generating capacity and safety valve capacity. The plans will be reviewed to assure compliance with the regulations with particular emphasis on those details which are peculiar to the marine environment.

3. *Section 52.01–5(a)*—One commenter questioned the merits of requiring the boiler plans to be certified by a registered professional engineer who will normally be in the employ of the manufacturer. The commenter further stated that this requirement may put small manufacturers, who may not have ready access to a professional engineer, at a disadvantage. The requirement to have the plans certified by a registered professional engineer would assure that the boiler design has been reviewed by a competent engineer who is skilled in the art of boiler design. A registered professional engineer is an engineer who is licensed by one of the 50 states of the United States or the District of Columbia. While the specific licensing requirements may vary among the different states, the requirements are similar and generally follow the guidelines of the National Society of Professional Engineers. A registered professional engineer must meet certain minimum combinations of education and experience and pass a rigorous exam. Further, a professional engineer must adhere to a strict code of ethics which does not permit the engineer to certify designs outside the engineer's area of knowledge. Also, since the professional engineer certifies the boiler plans as an individual, this provides an independent review of the design. There are over 400,000 registered professional engineers, many who work for consulting firms who contract out their services. With this large number of professional engineers it should not be difficult for a manufacturer to retain the service of one skilled in the art of boiler design. Another commenter stated that this requirement would cause problems because registration requirements vary in the different states and suggested that boiler plans be certified by the manufacturer instead. We do not concur with this suggestion based on the above comments.

4. *Section 52.01–50(a) and Subpart 162.014.* In the NRPM, proposed § 50.01–50(a) would require fusible plugs to be installed only on boilers fired with solid fuel not in suspension or not equipped for unattended waterbed operation. The requirement that fusible plugs be from acceptable heats manufactured in accordance with Subpart 162.014 of Subchapter Q was retained. We have reconsidered this requirement due to recent difficulties experienced by several operations in obtaining fusible plugs meeting Subpart 162.014. Several manufacturers of approved fusible plugs have deleted them from their product list and other manufacturers are unwilling to maintain an inventory of approved fusible plugs for relatively few users. To alleviate these problems and assure an adequate supply of fusible plugs, § 52.01–50(a) is revised to require fusible plugs to comply with the fabrication and marking requirements of the ASME Code. Subpart 162.014 is removed.

5. *Section 52.01–100(b)(3)*—One commenter suggested that the size and pressure limitations for threaded

connections in § 52.01–100(b)(3) be increased. The commenter stated that the present limitations are impractical. The suggestion has not been adopted. These size and pressure limitations for threaded connections have been in our rules for over 25 years. During this time we have never received any indication that these rules have caused the marine industry any problems nor have we received any complaints on the size and pressure limitations for threaded connections in the past.

6. *Sections 52.01–135 and 53.10–3*—Two commenters suggested that additional requirements for experience, examination, and oversight be placed on the ASME Authorized Inspectors to ensure a minimum level of competency. One commenter recommended that the Authorized Inspectors be required to hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. This suggestion has been adopted. The National Board administers a licensing program for boiler and pressure vessel inspectors. Commissioned inspectors must have a minimum combination of education and experience and pass a rigorous twelve hour exam. In addition, supervisors of commissioned inspectors must meet additional experience and examination requirements. If a National Board Inspector fails to carry out his duties, he and his supervisor are subject to disciplinary action as determined by a hearing committee. The action of the hearing committee can vary from the dismissal of the charges to permanent (life time) revocation of the inspector's National Board Commission. Accordingly, §§ 52.01–135(b), 52.01–145(a), 53.10–3(a), and 53.10–15 have been revised to require ASME Authorized Inspectors to hold a valid National Board Commission and to include their commission number on the Manufacturer's Data Report Forms. The cost to comply with this requirement is minimal. The majority (over 98%) of ASME Authorized Inspectors hold a valid National Board Commission. Currently there are over 3600 National Board Commissioned inspectors located throughout the world.

7. *Sections 52.01–135 and 53.10–3*—One commenter raised a concern that the requirement for shop inspections be carried out by an "Authorized Inspector" as defined in the ASME Code is exclusionary since not everybody can meet the qualification requirements. The ASME Code is an industry standard which is recognized throughout the world and is adopted into many of the boiler laws of the United States and Canada. ASME qualification requirements for inspectors ensure that inspections are performed by competent individuals who are well versed in the design and construction of boilers. These requirements are not unreasonable restraints to protect the lives of persons on board certificated vessels, property, and the marine environment. Further, alternative inspection procedures could be authorized by an Officer in Charge, Marine Inspection (OCMI) under other regulations in Title 46, CFR that allow equivalencies. The Title 46 regulations that allow equivalencies include §§30.15–1, 70.15–1, 90–15–1, 108.105, 175.15–1, and 188.15–1.

8. *Section 52.05–5*—One commenter suggested that weld procedures and welder performance qualifications approved by ABS be included as an alternative to qualifying weld procedures and welders to the ASME Code. This suggestion was not adopted. In order to stamp a boiler with the appropriate ASME Code symbol, welders and weld procedures must be qualified in accordance with the ASME Code. This is a basic requirement of the ASME Code and cannot be waived. Existing Coast Guard and ABS welding requirements parallel those of the ASME Code. Accordingly, most of the weld procedures and welders qualified to USCG and ABS requirements already meet qualification requirements of the ASME Code.

Economic Evaluation and Record Keeping

These regulations have been reviewed under Executive Order 12291 and the Department of Transportation's Order 2100.5 "Policies and Procedures for Simplification, Analysis and Review of Regulations" dated May 22, 1980, and have been determined to be neither major nor significant. A final evaluation has been prepared and placed in the public docket. As stated in the final evaluation, these rules would result in an estimated annual savings of 3848 staff hours and $126,690.00 for manufacturers plus 3976 staff hours and $99,400.00 for the Coast Guard. These savings result from the reduced amount of paperwork required to be submitted, the substantial amount of time saved by manufacturers in obtaining required inspections of boilers, and the time saved by the Coast Guard in performing inspections.

These regulations have been evaluated in accordance with the Regulatory Flexibility Act (94 Stat. 1164). It is certified that these regulations will not have a significant economic impact on a substantial number of small entities. For the purposes of this rule making, "small entities" consist of small boiler manufacturers. As explained in the final evaluation, most manufacturers, both large and small, already hold the ASME stamp. The cost to obtain this stamp ($5,000 for small manufacturers, up to approximately $20,000 for large manufacturers) is marginal compared to overall business costs. Also, some small manufacturers who, unlike large concerns, do not have a registered professional engineer (PE) in their organization will incur some increased costs to hire a registered PE to review and certify design drawings in accordance with these regulations. However, the total time and dollar costs for manufacturers, both large and small, resulting from these regulations is expected to be less than the time and money involved to obtain Coast Guard plan approval and shop inspection under the old requirements.

Paperwork Reduction Act

An analysis of the recordkeeping requirements in these regulations was conducted under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The analysis shows that 475 documents were required to be submitted annually to the Coast Guard under the old requirements. These reporting and recordkeeping requirements have been approved by the Office of Management and Budget and issued OMB control number 2115–0142. The requirements as revised in this rulemaking will reduce the annual reporting burden from 475 documents down to 400 documents.

List of Subjects 46 CFR Part 50, 52, 53, 54, 63, and 162

Vessels, Marine safety.

In consideration of the foregoing, the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, are amended as follows:

1. The authority citation for Parts 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Subchapter F of Title 46, is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

PART 50–GENERAL PROVISIONS

2. In § 50.05–5 a new paragraph (d) is added to read as follows:

§ 50.05–5 Existing boilers, pressure vessels or piping systems.

* * * * *

(d) For the purpose of this section, existing equipment includes only items which have previously met all Coast Guard requirements for installation

aboard a vessel certificated by the Coast Guard, including requirements for design, fabrication, testing, and inspection at the time the equipment was new.

3. In § 50.15–5 paragraph (c) is revised to read as follows:

§ 50.15–5 ASME Boiler and Pressure Vessel Code.

* * * * *

(c) Except as required in § 52.01–1(a), § 52.01–120(a)(2), § 53.01–1, and § 54.01–5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter need not hold the applicable ASME Code symbol stamps.

* * * * *

4. § 50.20–1(b) is revised to read as follows:

§ 50.20–1 General.

* * * * *

(b) Manufacturer's of pressure vessels and other components, which require specific fabrication inspection in accordance with the requirements of this subchapter, shall submit and obtain approval of the applicable construction plans prior to the commencement of such fabrication. Manufacturers of automatically controlled boilers shall submit and obtain approval of the applicable control system plans prior to installation of the boiler. Manufacturers of boilers which must meet the requirements of Part 52 of this subchapter shall submit the applicable construction plans for review prior to installation.

5. § 50.30–1(a) is revised to read as follows:

§50.30–1 Scope.

(a) The manufacturer shall notify the Officer in Charge, Marine Inspection, of the intended fabrication of pressure vessels that will require Coast Guard inspection.

* * * * *

§ 50 .30–5 [Removed]

6. § 50.30–5 is removed.

PART 52—POWER BOILERS

7. The table of contents is revised to read as follows:

Subpart 52.01—General Requirements

Sec.

Subpart 52.05—Requirements for Boilers Fabricated by Welding

Subpart 52.15—Requirements for Watertube Boilers

Subpart 52.20—Requirements for Firetube Boilers

Subpart 52.25—Other Boiler Types

8. In § 52.01–1 paragraph (a) introductory text, and Table 52–01–1(a) are revised to read as follows:

§ 52.01–1 Adoption of section I of the ASME Code.

(a) Main power boilers and auxiliary boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section I of the ASME (American Society of Mechanical Engineers) Code, as limited, modified, or replaced by specific requirements in this part. The provisions in the appendix to section I of the ASME Code are adopted and shall be followed when the requirements in section I make them mandatory. For general information Table 52.01–1(a) lists the various paragraphs in section I of the ASME Code which are limited, modified, or replaced by regulations in this part.

TABLE 52.01–1(a)—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION I OF THE ASME CODE

Paragraphs in section I, ASME Code[1] and disposition	Unit of this part
PG–1 replaced by	54.01–5(a)
PG–5 through PG–13 modified by	52.01–90
PG–16 through PG–31 modified by	52.01–95
PG–32 through PG–39 modified by	52.01–100
PG–42 through PG–55 modified by	52.01–100
PG–58 and PG–59 modified by	52.01–105
PG–60 modified by	52.01–110
PG–61 modified by	52.01–115 (56.50–30)
PG–67 through PG–73 modified by	52.01–120
PG–90 through PG–100 modified by	52.01–135 (52.01–95)
PG–91 modified by	52.01–135(b)
PG–99 modified by	52.01–135(c)
PG–100 modified by	52.01–95(e)
PG–104 through PG–113 modified by	52.01–140(a)
PG–112 and PG–113 modified by	52.01–145
PW–1 through PW–54 modified by	52.05–1
PW–10 modified by	52.05–15
PW–11.1 modified by	52.05–20
PW–16 modified by	52.05–30
PW–41 modified by	52.05–20, 52.05–45
PWT–1 through PWT–15 modified by	52.15–1
PWT–9 modified by	52.15–5
PWT–9.2 replaced by	52.15–5(b)
PWT–11 modified by	52.15–5
PWT–11.3 replaced by	52.15–5(b)
PFT–1 through PFT–49 modified by	52.20–1
PFT–44 modified by	52.20–17
PFT–46 modified by	52.20–25
PFH–1 modified by	52.25–3
PMB–1 through PMB–21 modified by	52.25–5
PEB–1 through PEB–19 modified by	52.25–7
PVG–1 through PVG–12 modified by	52.25–10
A–19 through A–21 modified by	52.01–50

[1] The references to specific provisions in the ASME Code are coded. The first letter "P" refers to section I, while the letter "A" refers to the appendix to section I. The letter or letters following "P" refer to a specific subsection of section I. The number following the letter or letters refers to the paragraph so numbered in the text.

* * * * *

9. In § 52.01–3 paragraph (b)(9) is revised to read as follows:

§ 52.01–3 Definitions of terms used in this part.

* * * * *

(b)(9) *Furnace.* A furnace is a firebox or a large flue in which the fuel is burned.

(i) *Corrugated furnace.* A corrugated furnace is a cylindrical shell wherein corrugations are formed

circumferentially for additional strength and to provide for expansion.

(ii) *Plain furnace.* A plain furnace is a cylindrical shell usually made in sections joined by means of riveting or welding.

* * * * *

10. § 52.01–5 is revised to read as follows:

§ 52.01–5 Plans.

(a) Manufacturers intending to fabricate boilers to be installed on vessels shall submit detailed plans as required by Subpart 50.20 of this subchapter. The plans, including design calculations, must be certified by a registered professional engineer as meeting the design requirements in this part and in section I of the ASME Code.

(b) The following information must be included:

(1) Calculations for all pressure containment components including the maximum allowable working pressure and temperature, the hydrostatic or pneumatic test pressure, the maximum steam generating capacity and the intended safety valve settings.

(2) Joint design and methods of attachment of all pressure containment components.

(3) A bill of material meeting the requirements of section I of the ASME Code, as modified by this subpart.

(4) A diagrammatic arrangement drawing of the assembled unit indicating the location of internal and external components including any interconnecting piping.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under Control No. 2115–0142)

11. In § 52.01–35 paragraph (b) is revised to read as follows:

§ 52.01–35 Auxiliary, donkey, fired thermal fluid heater, and heating boilers.

* * * * *

(b) Fired vessels in which steam is generated at pressures exceeding 103 kPa gage (15 psig) shall meet the requirements of this part.

12. Section 52.01–50 is amended by revising paragraphs (a) and (g), by removing and reserving paragraph (j), and by removing paragraph (l) as follows:

§ 52.01–50 Fusible plugs (replaces A–19 through A–21).

(a) All boilers, except watertube boilers, with a maximum allowable working pressure in excess of 206 kPa gage (30 psig), if fired with solid fuel not in suspension, or if not equipped for unattended waterbed operation, must be fitted with fusible plugs. Fusible plugs must comply with only the requirements of A19 and A20 of the ASME Code and be stamped on the casing with the name of the manufacturer, and on the water end of the fusible metal "ASME Std.". Fusible plugs are not permitted where the maximum steam temperature to which they are exposed exceeds 218 °C (425 °F).

* * * * *

(g) Boilers of types not provided for in this section shall be fitted with at least one fusible plug of such dimensions and located in a part of the boiler as will best meet the purposes for which it is intended.

* * * * *

(j) [Reserved]

* * * * *

(l) [Removed]

§ 52.01–90 [Amended]

13. § 52.01–90 is amended as follows:

a. Paragraphs (c), (e), (g) and (i) are removed.

b. Paragraphs (d), (f), and (h) are redesignated as paragraphs (c), (d), and (e) respectively.

14. § 52.01–95 is amended as follows:

a. Paragraphs (b)(1) and (2) are revised.

b. Paragraph (e) is removed.

c. Paragraphs (f) and (g) are redesignated as paragraphs (e) and (f) respectively.

As revised the text of paragraphs (b)(1) and (b)(2) read as follows:

§ 52.01–95 Design (modifies PG–16 through PG–31 and PG–100).

* * * * *

(b) *Superheater.* (1) The design pressure of a superheater integral with the boiler shall not be less than the lowest setting of the drum safety valve.

(2) Controls shall be provided to insure that the maximum temperature at the superheater outlets does not exceed the allowable temperature limit of the material used in the superheater outlet, in the steam piping, and in the associated machinery under all operating conditions including boiler overload. Controls need not be provided if the operating superheater characteristic is demonstrated to be such that the temperature limits of the material will not be exceeded. Visible and audible alarms indicating excessive superheat shall be provided in any installation in which the superheater outlet temperature exceeds 454 °C (850 °F). The setting of the excessive superheat alarms must not exceed the maximum allowable temperature of the superheater outlet, which may be limited by the boiler design, the main steam piping design, or the temperature limits of other equipment subjected to the temperature of the steam.

* * * * *

15. § 52.01–100 is revised to read as follows:

§ 52.01–100 Openings and compensation (modifies PG–32 through PG–39, PG–42 through PG–55).

(a) The rules for openings and compensation shall be as indicated in PG–32 through PG–55 of the ASME Code except as noted otherwise in this section.

(b) (Modifies PG–39.) Pipe and nozzle necks shall be attached to vessel walls as indicated in PG–39 except that threaded connections shall not be used under any of the following conditions:

(1) Pressures greater than 4137 kPa (600 psig);

(2) Nominal diameters greater than 51mm (2 in.); or

(3) Nominal diameters greater than 19mm (0.75 in.) and pressures above 1034 kPa (150 psig).

(c) *(Modifies PG–42).* Butt welding flanges and fittings must be used when full radiography is required by § 56.95–10.

16. § 52.01–105 is revised to read as follows:

§ 52.01–105 Piping, valves and fittings (modifies PG–58 and PG–59).

(a) Boiler external piping within the jurisdiction of the ASME Code must be as indicated in PG–58 and PG–59 of the ASME Code except as noted otherwise in this section. Piping outside the jurisdiction of the ASME Code must meet the appropriate requirements of Part 56 of this subchapter.

(b) In addition to the requirements in PG–58 and PG–59 of the ASME Code, boiler external piping must:

(1) meet the design conditions and criteria in § 56.07–10 of this subchapter, except § 56.07–10(b);

(2) be included in the pipe stress calculations required by § 56.31–1 of this subchapter;

(3) meet the nondestructive examination requirements in § 56.95–10 of this subchapter;

(4) have butt welding flanges and fittings when full radiography is required; and

(5) meet the requirements for threaded joints in § 56.30–20 of this subchapter.

(c) Steam stop valves, in sizes exceeding 152mm (6 inch) NPS, must be fitted with bypasses for heating the line and equalizing the pressure before the valve is opened.

(d) *Feed connections.* (1) Feed water shall not be discharged into a boiler

against surfaces exposed to hot gases or radiant heat of the fire.

(2) Feed water nozzles of boilers designed for pressures of 2758 kPa (400 psi), or over, shall be fitted with sleeves or other suitable means employed to reduce the effects of metal temperature differentials.

(e) *Blowoff connections.* (1) Firetube and drum type boilers shall be fitted with a surface and a bottom blowoff valve or cock attached directly to the boiler or to a short distance piece. The surface blowoff valve shall be located within the permissible range of the water level, or fitted with a scum pan or pipe at this level. The bottom blowoff valve shall be attached to the lowest part of the boiler or fitted with an internal pipe leading to the lowest point inside the boiler. Watertube boilers designed for pressures of 2413 kPa (350 psig) or over are not required to be fitted with a surface blowoff valve. Boilers equipped with a continuous blowdown valve on the steam drum are not required to be fitted with an additional surface blowoff connection.

(2) Where blowoff pipes are exposed to radiant heat of the fire, they must be protected by fire brick or other suitable heat-resisting material.

(f) *Dry pipes.* Internal dry pipes may be fitted to the steam drum outlet provided the dry pipes have a diameter equal to the steam drum outlet and a wall thickness at least equal to standard commercial pipe of the same diameter. Openings in dry pipes must be as near as practicable to the drum outlet and must be slotted or drilled. The width of the slots must not be less than 6mm (0.25 in.). The diameter of the holes must not be less than 10mm (0.375 in.). Where dry pipes are used, they must be provided with drains at each end to prevent an accumulation of water.

17. In § 52.01–110 paragraph (b)(1) is revised to read as follows:

§ 52.01–100 Water level indicators, water columns, gage glass connections, gage cocks, and pressure gages (modifies PG–60).

* * * * *

(b) *Water level indicators (modifies PG–60.1).* (1) Each boiler, except those of the forced circulation type with no fixed water line and steam line, shall have two independent means of indicating the water level in the boiler connected directly to the head or shell. One shall be a gage lighted by the emergency electrical system (See Subpart 112.15 of Subchapter J (Electrical Engineering) of this chapter) which will insure illumination of the gages under all normal and emergency conditions. The secondary indicator may consist of a gage glass, or other acceptable device. Where the allowance pressure exceeds 1724 kPa (250 psi), the gage glasses shall be of the flat type instead of the common tubular type.

* * * * *

§ 52.01–110 [Amended]

18. In § 52.01–110 paragraph (h) is removed.

19. Section 52.01–115 is revised to read as follows:

§ 52.01–115 Feedwater supply (modifies PG–61).

Boiler feedwater supply must meet the requirements of PG–61 of the ASME Code and § 56.50–30 of this subchapter.

20. In § 52.01–120, the heading, paragraphs (a) (1), (2), (6), and (7) are revised, paragraph (a)(10) is added, paragraphs (b)(3) and (d)(2) are revised to read as follows:

§ 52.01–120 Safety valves and safety relief valves (modifies PG–67 through PG–73).

(a)(1) Boiler safety valves and safety relief valves must be as indicated in PG–67 through PG–73 of the ASME Code except as noted otherwise in this section.

(2) A safety valve must:

(i) Be stamped in accordance with PG–110 of the ASME Code;

(ii) Have its capacity certified by the National Board of Boiler and Pressure Vessel Inspectors;

(iii) Have a drain opening tapped for not less than 6mm (¼ in.) NPS; and

(iv) Not have threaded inlets for valves larger than 51mm (2 in.) NPS.

* * * * *

(6) (Modifies PG–67). Drum safety valves shall be set to relieve at a pressure not in excess of that allowed by the Certificate of Inspection. Where for any reason this is lower than the pressure for which the boiler was orginially designed and the revised safety valve capacity cannot be recomputed and certified by the valve manufacturer, one of the tests described in PG–70(3) of the ASME Code shall be conducted in the presence of the Inspector to insure that the relieving capacity is sufficient at the lower pressure.

(7) On new installations the safety valve nominal size for propulsion boilers and superheaters must not be less than 38mm (1½ in.) nor more than 102mm (4 in.). Safety valves 38mm (1½ in.) to 114mm (4½ in.) may be used for replacements on existing boilers. The safety valve size for auxiliary boilers must be between 19mm (¾ in.) and 102mm (4 in.) NPS. The nominal size of a safety valve is the nominal diameter (as defined in 56.07–5(b)) of the inlet opening.

* * * * *

(10) *(Modifies PG–73.2).* Cast iron may be used only for caps and lifting bars. When used for these parts, the elongation must be at least 5 percent in 51mm (2 inch) gage length. Nonmetallic material may be used only for gaskets and packing.

(b) * * *

(3) Drum pilot actuated superheater safety valves are permitted provided the setting of the pilot valve and superheater safety valve is such that the superheater safety valve will open before the drum safety valve.

* * * * *

(d) * * *

(2) (Modifies PG–73). The lifting device required by PG–73.1.3. of the ASME Code shall be fitted with suitable relieving gear so arranged that the controls may be operated from the fireroom or engineroom floor.

§ 52.01–125 [Removed]

21. Section 52.01–125 is removed.

22. In § 52.01–135 paragraphs (b) and (c) are revised to read as follows:

§ 52.01–135 Inspection and tests (modifies PG–90 through PG–100).

* * * * *

(b) The inspections required by PG–90 through PG–100 of the ASME Code shall be performed by the "Authorized Inspector" as defined in PG–91 of the ASME Code. The Authorized Inspector shall hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. After installation, boilers will be inspected for compliance with this Part by the "Marine Inspector" as defined in § 50.10–15 of this subchapter.

(c) *Hydrostatic test (modifies PG–99).* Each new boiler shall be hydrostatically tested after installation to 1½ times the maximum allowable working pressure as indicated in PG–99 of the ASME Code. Before the boilers are insulated, accessible parts of the boiler shall be emptied, opened up and all interior surfaces shall be examined by the marine inspector to ascertain that no defects have occurred due to the hydrostatic test.

* * * * *

23. Section 52.01–140 is revised to read as follows:

§ 52.01–140 Certification by stamping (modifies PG–104 through PG–113).

(a) All boilers built in accordance with this part must be stamped with the appropriate ASME Code symbol as

required by PG–104 through PG–113 of the ASME Code.

(b)(1) Upon satisfactory completion of the tests and Coast Guard inspections, boilers must be stamped with the following:

(i) Manufacturer's name and serial number;

(ii) ASME Code Symbol;

(iii) Coast Guard symbol, which is affixed only by marine inspector (see § 50.10–15 of this subchapter);

(iv) Maximum allowable working pressure ——— at ——— °C (°F); and

(v) Boiler rated steaming capacity in kilograms (pounds) per hour (rated joules (B.T.U.) per hour output for high temperature water boilers).

(2) The information required in paragraph (b)(1) of this section must be located on:

(i) The front head or shell near the normal waterline and within 610 mm (24 inches) of the front of firetube boilers; and

(ii) The drum head of water tube boilers.

(3) Those heating boilers which are built to section I of the ASME Code, as permitted by §53.01–10(e) of this subchapter, do not require Coast Guard stamping and must receive full ASME stamping including the appropriate code symbol.

(c) The data shall be legibly stamped and shall not be obliterated during the life of the boiler. In the event that the portion of the boiler upon which the data is stamped is to be insulated or otherwise covered, a metal nameplate as described in PG–106.6 of the ASME Code shall be furnished and mounted. The nameplate is to be maintained in a legible condition so that the data may be easily read.

(d) Safety valves shall be stamped as indicated in PG–110 of the ASME Code.

24. §52.01–145 is revised to read as follows:

§ 52.01–145 Manufacturers' data report forms (modifies PG–112 and PG–113).

The manufacturers' data report forms required by PG–112 and PG–113 of the ASME Code must be made available to the marine inspector for review. The Authorized Inspector's National Board commission number must be included on the manufacturers's data report forms.

§§ 52.05–5, 52.05–5, 52.05–10, 52.05–35, 52.05–40, 52.05–50, 52.05–55 [Removed]

25. In Subpart 52.05–5, §§ 52.05–5, 52.05–10, 52.05–35, 52.05–40, 52.05–50 and 52.05–55 are removed and §§ 52.05–20 and 52.05–45 (b) and (c) are revised to read as follows:

§ 52.05–20 Radiographic and ultrasonic examination (modifies PW–11 and PW–41.1).

Radiographic and ultrasonic examination of welded joints shall be as described in PW–11 of the ASME Code except that parts of boilers fabricated of pipe material, such as drums, shells, downcomers, risers, cross pipes, headers and tubes containing only circumferentially welded butt joints, shall be nondestructively examined as required by § 56.95–10 of this subchapter even though they may be exempted by the size limitations specified in PW–11.1.2 and PW–41.1 of the ASME Code.

§ 52.05–45 Circumferential joints in pipes, tubes and headers (modifies PW–41).

* * * * *

(b) (Modifies PW–41.1) Circumferential welded joints in pipes, tubes, and headers of pipe material must be nondestructively examined as required by § 56.95–10 of this subchapter and PW–41 of the ASME Code.

(c) (Modifies PW–41.5) Butt welded connections shall be provided whenever radiography is required by § 56.95–10 of this subchapter for the piping system in which the connection is to be made. When radiography is not required, welded socket or sleeve type joints meeting the requirements of PW–41.5 of the ASME Code may be provided.

§§ 52.10–1—52.10–15 Subpart 52.10 [Removed]

26. Subpart 52.10 is removed.

27. § 52.15–1 is revised to read as follows:

§ 52.15–1 General (modifies PWT–1 through PWT–15).

Watertube boilers and parts thereof shall be as indicated in PWT–1 through PWT–15 of the ASME Code except as noted otherwise in this subpart.

28. Section 52.15–5 is amended by removing paragraphs (c) and (e), and by revising and redesignating paragraphs (d) and (f) as paragraphs (c) and (d), respectively to read as follows:

§ 52.15–5 Tube connections (modifies PWT–9 and PWT–11).

* * * * *

(c) In welded wall construction employing stub and welded wall panels which are field welded, approximately 10 percent of the field welds shall be checked using any acceptable nondestructive test method.

(d) Nondestructive testing of the butt welded joints shall meet the requirements of § 56.95–10 of this subchapter.

* * * * *

29. Figure 52.15–5 is removed.

§§ 52.20–5, 52.20–10, 52.20–15, 52.20–20 [Removed]

30. In subpart 52.20, §§ 52.20–5, 52.20–10, 52.20–15, and 52.20–20 are removed.

§ 52.20–10 [Amended]

31. Figure 52.20–10 is removed.

32. § 52.20–17 is revised to read as follows:

§ 52.20–17 Opening between boiler and safety valve (modifies PFT–44).

When a discharge pipe is used, it must be installed in accordance with the requirements of § 52.01–105.

33. Subpart 52.25 is revised to read as follows:

Subpart 52.25—Other Boiler Types

Sec.

Subpart 52.25—Other Boiler Types

§ 52.25–1 General.

Requirements for fired boilers of various sizes and uses are referenced in Table 54.01–5(a) of this subchapter.

§ 52.25–3 Feedwater heaters (modifies PFH–1).

In addition to the requirements in PFH–1 of the ASME Code, feedwater heaters must meet the requirements in this Part or the requirements in Part 54.

§ 52.25–5 Miniature boilers (modifies PMB–1 through PMB–21).

Miniature boilers must meet the applicable provisions in this Part for the boiler type involved and the mandatory requirements in PMB–1 through PMB–21 of the ASME Code.

§ 52.25–7 Electric Boiler (modifies PEB–1 through PEB–19).

Electric boilers required to comply with this part must meet the applicable provisions in this Part and the mandatory requirements in PEB–1 through PEB–19 except PEB–3 of the ASME Code.

§ 52.25–10 Organic fluid vaporizer generators (modifies PVG–1 through PVG–12).

(a) Organic fluid vaporizer generators and parts thereof shall meet the requirements of PVG–1 through PVG–12 of the ASME Code except as noted otherwise in this section.

(b) The application and end use of organic fluid vaporizer generators shall be approved by the Commandant.

§ 52.25-15 Fired thermal fluid heaters.

(a) Fired thermal fluid heaters shall be designed, constructed, inspected, tested, and stamped in accordance with the applicable provisions in this Part.

(b) Each fired thermal fluid heater must be fitted with a control which prevents the heat transfer fluid from being heated above its flash point.

(c) The heat transfer fluid must be chemically compatible with any cargo carried in the cargo tanks serviced by the heat transfer system.

§ 52.25-20 Exhaust gas boilers.

Exhaust gas type boilers with a maximum allowable working pressure greater than 103 kPa gage (15 psig) or an operating temperature greater than 454°C (850°F) shall be designed, constructed, inspected, tested, and stamped in accordance with the applicable provisions in this Part. The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of the exhaust gas. This temperature shall be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust.

PART 53—HEATING BOILERS

34. The Table of Contents is revised to read as follows:

Subpart 53.01—General Requirements

Sec.
53.01-1 Adoption of section IV of the ASME Code.
53.01-5 Scope (modifies HG-100).
53.01-10 Service restrictions and exceptions (replaces HG-101).

Subpart 53.05—Pressure Relieving Devices (Article 4)

53.05-1 Safety valve requirements for steam boilers (modifies HG-400 and HG-401).
53.05-2 Relief valve requirements for hot water boilers (modifies HG-400.2).
53.05-5 Discharge capacities and valve markings.

Subpart 53.10—Tests, Inspections, Stamping, and Reporting (Article 5)

53.10-1 General.
53.10-3 Tests and shop inspections (modifies HG-500 through HG-540).
53.10-10 Certification by stamping (modifies HG-530).
53.10-15 Manufacturers' data report forms (modifies HG-520).

Subpart 53.12—Instruments, Fittings, and Controls

53.12-1 General (modifies HG-600 through HG-640).

§ 53.01-1 [Amended]

35. § 53.01-1(a) introductory tests and Table 53.01-1(a) are revised to read as follows:

(a) Heating boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section IV of the ASME (American Society of Mechanical Engineers) Code as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to section IV of the ASME Code are adopted and shall be followed when the requirements in section IV make them mandatory. For general information Table 53.01-1(a) lists the various paragraphs in section IV of the ASME Code which are limited, modified, or replaced by regulations in this part.

TABLE 53.01-1(A).—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION IV OF THE ASME CODE

Paragraphs in section IV, ASME Code[1] and disposition	Unit of this part
HG-100 modified by	53.01-5(b)
HG-101 replaced by	53.01-10
HG-400 modified by	53.05-1
HG-400.2 modified by	53.05-2
HG-401 modified by	53.05-1
HG-401.2 modified by	53.05-3
HG-500 through HG-540 modified by	53.10-3
HG-600 through HG-640 modified by	53.12-1

[1]The references to specific provisions in the ASME Code are coded. The first letter "H" refers to section IV. The letter following "H" refers to a part or subpart in section IV. The number following the letters refers to the paragraph so numbered in the text of the part or subpart in section IV.

§ 53.01-5 [Amended]

36. In § 53.01-5 paragraph (a) is revised by adding a period after the word "Code".

37. § 53.01-5 is amended by removing paragraph (c).

38. Section 53.01-10 is amended by revising paragraphs (b), (c) and (d), and by adding paragraphs (e) and (f) to read as follows:

§ 53.01-10 Service restrictions and exceptions (replaces HG-101).

* * * * *

(b) *Service restrictions.* (1) Boilers of wrought materials shall be restricted to a maximum of 103 kPa gage (15 psig) for steam and a maximum of 689 kPa (100 psig) or 121°C (250°F) for hot water. If operating conditions exceed these limits, design and fabrications shall be in accordance with Part 52 of this subchapter.

(2) Boilers of cast iron materials shall be restricted to a maximum of 103 kPa gage (15 psig) for steam and to a maximum of 206 kPa gage (30 psig) or 121°C (250°F) for hot water.

(c) *Hot water supply boilers.* (1) Electrically fired hot water supply boilers which have a capacity not greater than 454 liters (120 gallons), a heat input not greater than 58.6 kilowatts (200,000 B.t.u. per hour), and are listed as approved under Underwriters' Laboratories Standard 174 or 1453 are exempted from the requirements of this part provided they are protected by a pressure relief device. This relief device need not comply with § 53.05-2.

(2) Oil fired hot water supply boilers shall not be exempted from the requirements of this part on the basis of size or heat input.

(d) Exhaust gas type boilers shall be restricted to a working pressure equal to or less than 103 kPa gage (15 psig) and an operating temperature equal to or less than 454°C (850°F). The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of exhaust gas. This temperature shall be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust.

(e) Heating boilers whose operating conditions are within the service restrictions of § 53.01-10(b)(1) may be constructed in accordance with section I of the ASME Code. In addition, these heating boilers must:

(1) be stamped with the appropriate ASME Code symbol in accordance with PG-104 through PG-113 of the ASME Code;

(2) meet the service restrictions of § 53.01-10(b)(2) if made of cast iron;

(3) have safety valves which meet the requirements of § 52.01-120 of this subchapter;

(4) if a hot water supply boiler, have a temperature relief valve or a pressure-temperature relief valve in accordance with § 53.05-2(c);

(5) if automatically controlled, meet the applicable requirements in Part 63 of this subchapter; and

(6) meet the inspection and test requirements of § 53.10-3.

(f) *Controls and miscellaneous accessories.* Refer to Part 63 of this subchapter for the requirements governing controls and miscellaneous accessories.

39. Subpart 53.05 is revised to read as follows:

Subpart 53.05—Pressure Relieving Devices (Article 4)

Sec.
53.05-1 Safety valve requirements for steam boilers (modifies HG-400 and HG-401).
53.05-2 Relief valve requirements for hot water boilers (modifies HG-400.2).
53.05-3 Materials (modifies JG-401.2).
53.05-5 Discharge capacities and valve markings.

Subpart 53.05—Pressure Relieving Devices (Article 4)

§ 53.05-1 Safety valve requirements for steam boilers (modifies HG-400 and HG-401).

(a) The pressure relief valve requirements and the safety valve requirements for steam boilers must be as indicated in HG-400 and HG-401 except as noted otherwise in this section.

(b) Each steam boiler must have at least one safety valve.

§ 53.05-2 Relief valve requirements for hot water boilers (modifies HG-400.2).

(a) The relief valve requirements for hot water boilers must be as indicated in article 4 of section IV of the ASME Code except as noted otherwise in this section.

(b) *Hot water heating boilers.* Each hot water heating boiler must have at least one safety relief valve.

(c) *Hot water supply boilers.* Each hot water supply boiler must have at least one safety relief valve and a temperature relief valve or a pressure-temperature relief valve. The valve temperature setting must not be more than 99°C (210°F).

§ 53.05-3 Materials (modifies HG-401.2).

(a) Materials for valves must be in accordance with HG-401.2 of the ASME Code except nonmetallic materials may be used only for gaskets and packing.

§ 53.05-5 Discharge capacities and valve markings.

(a) The discharge capacities and valve markings must be as indicated in HG-402 of the ASME Code. The discharge capacities must be certified by the National Board of Boiler and Pressure Vessel Inspectors.

40. Section 53.10-3 is revised to read as follows:

§ 53.10-3 Inspection and tests (modifies HG-500 through HG-540).

(a) The inspections required by HG-500 through HG-540 must be performed by the "Authorized Inspector" as defined in HG-575 of the ASME Code. The Authorized Inspector shall hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. After installation, heating boilers must be inspected for compliance with this Part by a marine inspector.

(b) Automatically controlled boilers must be subjected to the operating tests prescribed in Part 63 of this subchapter.

(c) All heating boilers must have the operation of their pressure relieving devices checked after the final installation.

§ 53.10-5 [Removed]

41. Section 53.10-5 is removed.

42. Section 53.10-10 is revised to read as follows:

§ 53.10-10 Certification by stamping

Stamping of heating boilers shall be as indicated in HG-530 of the ASME Code.

43. Section 53.10-15 is revised to read as follows:

§ 53.10-15 Manufacturers' data report forms.

The manufacturers' data report forms required by HG-520 of the ASME Code must be made available to the marine inspector for review. The Authorized Inspector's National Board commission number must be included on the manufacturers' data report forms.

§ 53.13-1 Subpart 93.13 [Removed]

44. Subpart 53.13 is removed.

§ 53.15-1—53.15.5 Subpart 53.15 [Removed]

45. Subpart 53.15 is removed.

PART 54—PRESSURE VESSELS

§ 54.01-5 [Amended]

46. In § 54.01-5, Table 54.01-5(a) is revised to read as follows:

TABLE 54.01-5(A)—REGULATION REFERENCE FOR BOILERS, PRESSURE VESSELS, AND THERMAL UNITS

Service and pressure temperature boundaries	Part of subchapter regulating mechanical design	Part of subchapter regulating automatic control
Main (power) boiler: All	52	
Pressure vessel: All	54	NA
Fired auxiliary boiler [1] (combustion products or electricity):		
(a) Steam:		
More than 103 kPa (15 psig)	52	63
Equal to or less than 103 kPa (15 psig)	53	63
(b) Hot water heating:		
More than 689 kPa (100 psig) or 121°C (250°F)	52	63
Equal to or less than 689 kPa (100 psig) and 121°C (250°F)	53	63
(c) Hot water supply:		
More than 689 kPa (100 psig) or 121°C (250°F)	52	63
Equal to or less than 689 kPa (100 psig) and 121°C (250°F)	53	63
Other:		
(a) Fired thermal fluid heaters: All	52	63
(b) Unfired steam boiler:		
More than 206 kPa (30 psig) or 454°C (850°F) [2]	52	NA
Equal to or less than 206 kPa (30 psig) and 454°C (850°F) [2]	54	NA
(c) Evaporators and heat exchangers: More than 103 kPa (15 psig) [3]	54	NA
(d) Unfired hot water supply or heating boiler: More than 103 kPa (15 psig) [3]	54	NA

[1] Including exhaust gas types.
[2] Temperature of working fluid.
[3] Relief device is required even if designed for less than 103 kPa (15 psig).

47. In § 54.01-10 paragraph (a) is revised to read as follows:

§ 54.01-10 Steam generating pressure vessels (modifies U-1(e)).

(a) Pressure vessels in which steam is generated, such as steam generators in the secondary system of a nuclear plant, are classed as "Unfired Steam Boilers" except as required otherwise by paragraph (b) of this section. Unfired steam boilers must be fitted with an efficient water level indicator, a pressure gage, a blowdown valve, and an approved safety valve as required by § 54.15-15. Unfired steam boilers must be constructed in accordance with this part other than when the pressures are more than 206 kPa (30 psig) or the temperatures of the working fluid are more than 454 °C (850 °F) when such boilers must be constructed in accordance with Part 52 of this subchapter.

* * * * *

48. In § 54.15-10 paragraph (a) is revised to read as follows:

§ 54.15-10 Safety and relief valves (modifies UG-126).

(a) All safety and relief valves for use on pressure vessels or piping systems shall be designed to meet the protection and service requirements for which they are intended and shall be set to relieve at a pressure which does not exceed the "maximum allowable working pressure" of the pressure vessel or piping system. Relief valves are not required to have huddling chambers for other than steam service. In addition, safety valves used on vessels in which steam is generated shall meet § 52.01-120 of this subchapter except § 52.01-120(a)(9). For steam service below 206 kPa (30 psig), bodies of safety valves may be made of cast iron. Safety relief valves used in liquefied compressed gas service shall meet Subpart 162.017 or 162.018 in Subchapter Q (Specifications) of this chapter as appropriate.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

49. Section 58.01–15 is revised to read as follows:

§ 58.01–15 Fuel oil for boilers.

Oil to be used as fuel to be burned under boilers on vessels subject to inspection by the Coast Guard shall have a flashpoint of not less than 60°C (140°F), (Pensky-Martens Closed Cup Method, ASTM–D93). Fuels having a lower flashpoint will be considered in those cases where the complete fuel system has been approved by the Commandant. Piping for fuel oil transfer or service systems conveying oil that does not need to be heated for service must not have fuel oil heaters installed and must not be interconnected in such a manner that the oil can be heated in other fuel oil systems.

PART 63—CONTROL SYSTEMS FOR AUTOMATIC AUXILIARY HEATING EQUIPMENT

50. In § 63.05–90 paragraph (a) is revised to read as follows:

§ 63.05–90 Inspection and tests.

(a) Each heating unit shall be carefully examined by a marine inspector to determine compliance with the regulations and approved drawings.

* * * * *

51. In § 63.15–5 paragraph (a) is revised to read as follows:

§ 63.15–5 Plan approval.

(a) Except for electric water supply boilers listed by Underwriters Laboratories as meeting UL 174 or UL 1453, plans shall be submitted for approval prior to the assembly or manufacture of the equipment. (Refer to Subpart 50.20 of this subchapter for procedures to follow in submitting plans.) Sufficient information shall be submitted to enable determination of compliance with the regulations of this and other parts of this chapter.

* * * * *

52. In § 63.15–30 is revised to read as follows:

§ 63.15–30 Temperature-pressure relief devices.

Electric hot water supply boilers must have at least one safety relief valve and a temperature relief valve or a pressure-temperature relief valve. These pressure and temperature relief valves must meet Subpart 53.05 of this chapter. Electric hot water supply boilers listed by Underwriters Laboratories as meeting UL 174 may have temperature-pressure relief valves meeting the requirements of ANSI Standard Z 21.22 in lieu of Subpart 53.05 of this chapter.

53. Section 63.15–35 is revised to read as follows:

§ 63.15–35 Unspecified details.

Unspecified details such as electric supply connections, wiring terminals, and wiring shall be in accordance with Underwriters' Laboratories, Inc. UL–174—Electric Storage Tank Water Heaters or UL–1453—Electric Booster and Commercial Storage Tank Water Heaters as applicable.

54. In § 63.15–40 paragraph (b) is revised to read as follows:

§ 63.15–40 Operating test.

* * * * *

(b) For heaters not listed by Underwriters' Laboratories, Inc., all operating, limit, and safety devices and controls shall be tested by the marine inspector. Such tests shall be conducted aboard the vessel after installation. The pressure relief valve shall be tested as required by Part 52 or Part 53 of this subchapter as applicable.

* * * * *

PART 162—ENGINEERING EQUIPMENT

55. The authority citation for Part 162 reads as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

56. Subpart 162.001 is removed.
57. Subpart 162.002 is removed.
58. Subpart 162.012 is removed.
59. Subpart 162.013 is removed.
60. Subpart 162.014 is removed.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

February 27, 1985.

[FR Doc. 85–5178 Filed 3–7–85; 8:45 am]

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Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The regulation, 46 CFR Part 298, implements provisions of Title XI of the Merchant Marine Act, 1936, as amended (Act) (46 U.S.C. 1271–1279), prescribing conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of "obligation guarantees." [An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in section 1101(c) of the Act (46 U.S.C. 1271(c)).] The amendments adopted in this final rulemaking will: (1) Streamline procedures for processing applications for assistance under Title XI of the Act and make those procedures more efficient and responsive; (2) clarify the criteria that the Maritime Administration (MARAD) will apply in evaluating Title XI applications; (3) provide more detailed financial requirements; and (4) establish specific criteria and procedures for reviewing and evaluating requests by Title XI obligors for advances for debt service, insurance payments and other vessel-related expenses. The amendments in this final rulemaking also make certain technical changes to the existing regulation. A notice of proposed rulemaking is also being issued on this date to solicit comments on the calculation method for an internal rate of return (IRR) requirement that is included in the final rule.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 382–0389.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Act authorizes the Maritime Administrator, based upon delegation of authority by the Secretary of Transportation (Secretary), upon application by a United States citizen, to enter into a commitment to guarantee, and to guarantee the payment of the interest and the unpaid balance of principal on any obligation that is eligible to be guaranteed. The Act limits obligation guarantees to 87.5 percent of the actual cost of certain vessels, constructed, reconstructed or reconditioned without construction-differential subsidy (CDS), or 75 percent of the actual cost of a vessel built with the aid of CDS. [A "vessel" includes a cargo or passenger vessel, tanker, tug, towboat, barge or special purpose vessel, as defined in section 1101(b) of the Act (46 U.S.C. 1271(b)). The "actual cost" of a vessel is the aggregate of all amounts paid by or for the account of the obligor and all amounts which the obligor is obligated to pay for the construction, reconstruction, or reconditioning of the vessel, inclusive of designing, inspecting, outfitting or

equipping, as defined in sections 1101 (f) and (h) of the Act (46 U.S.C. 1271 (d), (f) and (h)).] Presently, MARAD is issuing obligation guarantees in an amount not to exceed 75 percent of the actual cost of a vessel constructed, reconstructed or reconditioned entirely in U.S. shipyards, with or without CDS, and from U.S. materials and components, where practicable. Each guaranteed obligation contains the statement that "the full faith and credit of the United States" is pledged to the payment of the unpaid principal and interest on the obligation.

The regulation implementing this authority is published at 46 CFR Part 298, and was substantially revised in 1978 to implement earlier amendments to the Act. The existing regulation contains an application procedure, eligibility requirements for the applicant and the project, a description of the types of financing contemplated, a provision for discretionary advances for principal payments on the obligations, a description of required documentation, a procedure for defaults and remedies therefor, and reporting requirements.

Basis for Final Rulemaking

This final rule, which amends the existing regulation, is being adopted after consideration of: (1) MARAD's program administration experience; (2) recommendations by the Department of Transportation Title XI Task Force; (3) recommendations by the President's Private Sector Survey on Cost Control; and (4) the comments received in response to the Notice of Proposed Rulemaking (NPRM) (48 FR 37453; August 18, 1983).

The NPRM invited comments for 60 days ending October 17, 1983. The comment period was extended by one month, to November 17, 1983, at the request of interested parties. Comments were received from 33 sources including affected shipowners, ship operators, trade and industry associations, investment firms and law firms for themselves or as representatives of members of the industry.

Request for Public Hearing

During the comment period, a request for public hearing on the proposed rulemaking was made stating that the industry should have the opportunity to express its views on this important proposal. On October 12, 1983, MARAD advised the requester that it believed that a public hearing did not appear necessary at the current time, since the public was being given the opportunity to submit written comments, and these comments were expected to provide an adequate expression of the various views on this proposal.

Review of these comments confirms that there is a need to revise the existing regulation, 46 CFR Part 298, in order to streamline and clarify procedures for processing applications for obligation guarantees and advances; to establish decision criteria, particularly for the applicant's financial requirements and the project's economic soundness; to assure uniformity of evaluation of these applications; to increase the investigation and annual guarantee fees; and to make certain technical changes to the existing regulation.

Section-by-Section Analysis of Comments on the Proposed Rulemaking

Section 298.3 Applications.

The time period for application review. Several commenters argued that MARAD should be flexible as to the time period in which applications will be processed. Others argued that MARAD should be able to process these applications within 120 days, rather than six months, as proposed. There was some commenter support for including express authority for MARAD to expedite processing.

MARAD believes that application processing can be accomplished more effectively and expeditiously if specific time requirements are adopted and deadlines are imposed for submission of additional information by applicants. The final regulation establishes the time period for processing applications that MARAD's experience in administering the Title XI program has proven necessary. It also provides the Secretary with discretion to extend or expedite processing time when appropriate. MARAD does not believe that express authority is needed in the final rule for the Secretary to expedite processing.

Formal documentation of extenuating circumstances. Some commenters suggested that requiring an applicant to submit formal documentation of "extenuating circumstances" in order to receive expedited review by the Secretary is unnecessary.

As stated above, MARAD believes that six months is necessary to perform an in-depth review of the material submitted by the applicant. However, to allow flexibility in the processing time, the regulation provides that the Secretary may consider applications submitted less than six months prior to the anticipated date by which the applicant requires a letter commitment, upon written documentation of extenuating circumstances. MARAD believes that submission of written documentation of extenuating circumstances is necessary to ensure adequate, equitable and consistent consideration of all requests for expedited processing.

Termination of the processing of an application. Several commenters argued that the termination of an application after one year should only occur if the lack of approval is due to a failure by the applicant to timely respond to the Secretary's requests for data. Others argued that MARAD should notify the applicant of the reason for its failure to approve the application.

As stated in the NPRM, MARAD believes that one year is usually sufficient to process an application (including the submission of additional information and the correction of application deficiencies) and notify applicants of a final decision. Moreover, the final regulation provides that the Secretary may extend the one year time period. In determining whether to extend the one year time period, the Secretary may consider factors other than the applicant's response to the Secretary's requests for data, such as the lack of adequate financial backing for the project and the length of time before the project may become active.

Unsuccessful applicants usually have been informally informed of MARAD's reason for not approving an application. Under the final rule, the Secretary will notify the applicant in writing of the reason for non-approval.

Time requirement for submission of documents. Commenters pointed out that the proposed regulation contains a typographical error in § 298.3(b)(2): "six months" should be "six weeks".

MARAD agrees that the time period specified in that section should be "six weeks," and has made that correction in the final rule.

Additional financial assurances. Several commenters urged that the regulation should more clearly outline the substance of the "additional assurances" that might be required from applicants. Other commenters believed that the proposed regulation, stating that "the Secretary *may* require additional assurances," should be changed to "the Secretary *shall* require additional assurances." Some commenters said that the final regulation should be clear that any additional assurances would be incorporated as conditions in the shipowner's letter commitment and would not be required prior to approval of the application.

As stated in the proposed regulation, additional assurances may include firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interests on other property and similar documents. MARAD believes that the

requirement for and the substance of such additional assurances should not be further mandated or restricted by regulation, but should remain within the discretion of the Secretary in order to allow for any type of "additional assurances" that the Secretary may legitimately need. For applications not involving financially strong, well established companies seeking to replace existing vessels in a vibrant market, additional assurances may well be required. MARAD believes that any additional assurances needed can be stated as a condition in the letter commitment or required during the processing of the application. Generally, it believes that it would be more efficient and effective to indicate the requirement for additional assurances prior to issuance of the letter commitment.

Priority in processing—General. Several commenters urged that a priority system is not necessary in view of the available statutory authority and current level of new commitments. Many commenters stated their concern that applicants who do not fall within one or more of the priority categories may be excluded from consideration. One commenter believed that an additional priority category for processing should be created that would favor an unsubsidized operator if two applications of equal merit are filed, one by a subsidized operator and another by an unsubsidized operator.

A priority system for processing applications in no manner excludes any application from consideration. It merely affects the order and time in which applications will be considered. Given the volume of applications and the limited resources available to process these applications, some priority system is necessary. There can be no serious question that the Secretary has discretion to establish a processing priority system pursuant to her authority (delegated to MARAD) to issue guarantees of ship financing obligations and regulations necessary or appropriate to carry out the Act (46 U.S.C. 1271 et seq.).

MARAD recognizes that there may be divergent factors to be considered when applications of equal merit are filed by a subsidized operator and an unsubsidized operator. Because of the impossibility in foreseeing every relevant factor that could be involved, MARAD believes that it is necessary to leave this evaluation to administrative discretion rather than establish a flat policy in this area.

Priority in processing—Capable of serving as naval auxiliaries. Some commenters suggested that the priority category for vessels capable of military auxiliary service should include shallow draft vessels which keep domestic commerce moving and the economy functioning. Other commenters asserted that priorities create a bias against certain inland vessels.

Some stated that MARAD should elaborate on how it determines military service capability.

MARAD believes that setting a priority for military service capability is justified since one of the bases for the Title XI program is the strengthening of the national defense and one of the purposes of the Act is to ensure that there are vessels capable of serving as naval and military auxiliaries in time of war or national emergency.

Those vessels "capable of serving as a naval and military auxiliary in time of war or national emergency" will vary as specific national defense requirements change from time to time. However, the Secretary needs flexibility in categorization in making any determination. The determination will be made on a case-by-case basis with advice from the Navy Department in the event that this categorization appears critical to processing or evaluating an application.

Traditionally, the determination of military usefulness has been restricted to oceangoing vessels. In the future, MARAD will consider, however, including all types of vessels, among them inland vessels, in this category. In any case, the final rule does not specifically exclude any vessel type from inclusion in a priority categorization. As stated before, an exclusion from the priority categories does not preclude a type of vessel from consideration for financial assistance, but rather, may affect the timing and the order of the processing of those applications.

Priority in processing—Mobilization base shipyards. Many commenters argued that giving priority to the shipyards within the established mobilization base is highly discriminatory. Others asserted that priorities create a bias against inland shipyards. Several commenters asked that objective guidelines be provided to determine what type of Great Lakes vessel or shipyard location might be designated as subject to national security jurisdiction. A number of commenters requested that clarification be given as to which shipyards are considered part of the defense mobilization base, which they believe should include inland yards.

MARAD agrees with those comments which suggested eliminating the consideration of certain shipyards as a factor in establishing application processing priorities. MARAD has concluded that the proposal would have been very difficult to administer and that the final rule will encourage processing of applications for construction of new, militarily useful vessels. The rule being adopted, therefore, does not give processing priority to vessels which are to be constructed in shipyards within the established mobilization base.

Priority in Processing—Purchase of present Title IX vessels. A number of commenters contended that application by financially strong companies for acquisition of vessels currently guaranteed under Title XI should not receive priority consideration, and that such debt should be defaulted, with no possibility for waivers of defaults. Other commenters argued that priority should be given to Title XI financing undertaken in "work-out" situations.

There is no basis to discriminate against applications to finance acquisitions of current Title XI vessels, as some commenters urge. If those applications meet statutory and regulatory requirements, it is MARAD's policy to consider them.

If the new applicant is proposing to service the full debt, and is more able than the present obligor to continue to meet that obligation, it is in the best interest of all concerned, including the Government and competitors, to encourage acquisition. MARAD will give priority consideration to those "work-out" proposals that include an acquisition. MARAD has decided to adopt the provision as proposed.

Section 298.11 Vessel requirement.

Buy American Requirements. A few commenters stated that MARAD should eliminate United States construction—"Buy American"—requirements under the Title XI program for all vessel machinery and components.

MARAD is considering this issue and may issue a separate notice of proposed rulemaking on the subject in the near future.

Actual Cost. One commenter suggested that MARAD require additional cost details from applicants regarding the "actual cost" of construction.

Presently, MARAD obtains and reviews detailed information regarding items comprising construction costs, including escalation provisions in construction contracts, to determine the actual cost of a vessel under its existing regulation. Specifically, § 298.11(b) of the existing regulation requires an applicant to submit additional technical cost data, and any other supporting cost

information necessary. Accordingly, MARAD has not modified the proposed provision.

Section 298.12 Applicant and operator's qualifications.

Citizenship. Some commenters urged that United States citizenship disclosure requirements be strengthened so that MARAD can monitor more closely any efforts by foreign entities to invest in or operate United States-flag vessels, or to enter the domestic market in apparent violation of the Jones Act.

The citizenship requirement for Title XI financed vessels is set forth in § 298.10 of the existing regulation and it requires the applicant to establish United States citizenship in the form and manner prescribed in 46 CFR Part 355. MARAD believes that the requirements of that section are sufficient. It requires disclosure of precise information used to determine citizenship eligibility.

Financial information required. Some commenters argued that information submitted should include credit rating reports and disclosures of liabilities which are typically made in auditor's reports and public or private placement documents.

Audited financial statements ("auditor's report") and placement documents, such as the offering memorandums of limited partnership, will be required by the final regulation in §§ 298.12(b) and 298.13. This information is also currently requested in Title XI applications. Current credit rating reports are normally not uniform in content and quality. MARAD believes, therefore, that an additional requirement to submit credit rating reports serves no useful purpose and is not necessary, since information submitted with the application and pursuant to this revised provision will provide more accurate and detailed data about an applicant's creditworthiness.

Typographical Errors. Commenters noted that the proposed regulation contains two typographical errors in section 298.12:

(1) Section 298.12(c)(2)—In the first sentence substitute the word "one" for "an."

(2) Section 298.12(f)—In the third sentence substitute the word "now" for "not."

MARAD agrees with the comments, and the final regulation reflects these corrections.

Section 298.13 Financial requirements.

Twenty-Five Percent Equity Requirement. One commenter believed that the 25 percent equity requirement unduly penalizes the owner/operator of United States-flag non-subsidized tonnage.

Other commenters stated that the circumstances for requiring a 25 percent equity requirement should be clarified. Another commenter said that requiring 25 percent equity funding will only continue the industry's decline. Some commenters stated that the Act permits the issuance of guarantees with respect to obligations amounting to 87½ percent of the actual cost of a vessel and a regulation should not be adopted which would permanently preclude 87½ percent financing in appropriate circumstances. Moreover, such circumstances should be set forth in the regulation. One commenter argued that it is contrary to legislative intent to permanently restrict guarantees to 75 percent of the actual cost. However, some commenters believed that the 25 percent equity requirement is appropriate.

MARAD disagrees with those comments indicating that 87½ percent financing should be permitted. The 25 percent equity requirement is necessary as a safeguard to strengthen new guarantees. A policy of issuing obligation guarantees not to exceed 75 percent has been pursued for almost three years to enhance the position of the Secretary as a secured guarantor. This policy applies equally to owners/operators of United States-flag tonnage, both subsidized and non-subsidized. The 75 percent guarantee level also reduces the cash flow required to service the Title XI debt and reduces the project breakeven revenue requirement for both subsidized and non-subsidized owners/operators. Further, there is no satutory prohibition against setting a financing limit below the statutory maximum of 87½ percent for a project.

Sources and Uses Statement. One commenter believed that requiring sources and uses statements in proposed § 298.13 duplicates § 298.14 requirements for a detailed description of the project's cash flow.

The cash flow statement shows the cash flow of a project under consideration for Title XI financing, while the sources and uses statement describes the overall operations of the applicant. There is no redundancy in the requirement, and the provision will be adopted as proposed.

More shipyard data. One commenter said that MARAD should require data pertaining to a shipyard's vessel construction experience, financial history, and background.

In §§ 298.11(c) and 298.32(a) of the existing regulation, there is adequate general authority for MARAD's consideration of such data.

In certain cases, MARAD has requested and obtained additional shipyard information. MARAD does not consider it necessary to include the suggested requirements since they would be applicable in unusual circumstances only, e.g., employment of a shipyard inexperienced in the construction of a particular type of vessel.

Special Financial Requirements. Two commenters urged that the change from alternative to special financial requirements at closing, in proposed § 298.13(e), unwisely reduces the Secretary's discretion, and effectively imposes a 33⅓ percent equity requirement on those excluded.

The alternative financial requirements—§ 298.13 in the existing regulation—could be used by any applicant. The proposed regulation restricts the use of the alternative (renamed "special") requirements to projects involving leverage lessors, parent companies or "hell or high water" charterers. MARAD disagrees that this change reduces the Secretary's discretion. This provision restricts the type of project eligible to use these special requirements. It has no effect on the Secretary's discretion.

MARAD has found that a 2:1 debt to equity ratio (33⅓ percent) for shipping companies is workable. The purpose of the proposed change is to promote consistency with other proposed provisions to the Title XI regulations (e.g. § 298.13). By restricting the type of project that could take advantage of these requirements, the likelihood increases that the projects approved will be successful. Therefore, no modification is being made to the provision as proposed.

Section 298.14 Economic soundness.

Economic evaluation. Several commenters argued that a five year economic projection rather than a long-term projection should be used.

Several commenters urged that MARAD's internal operating expense guidelines be updated.

Several commenters maintained that estimates should be based on credible data.

Several commenters urged that specific marketing strategy should be required.

The proposed rule, published in 1983, specified several "Basic Feasibility Factors" that would be considered in making economic soundness determinations. Pub. L. 98-595, enacted October 30, 1984, among other things, amends subsection (d)(1) of section 1104 of Title XI of the Act to provide that the

Secretary in determining whether the property or project associated with the guarantees applied for is economically sound, shall consider certain factors which are specifically set forth in the Pub. L. The "Basic Feasibility Factors" in the 1983 proposed rule are substantially indentical to the factors provided in this legislation. In order to conform the final rule fully to this legislation, the text of the legislation encompasing the economic soundness factors has been incorporated into the final rule. However, the legislation does add the requirement that the Secretary consider a factor for assessment of technical improvement, e.g., fuel efficiency and improved safety, in the determination of economic soundness for inland waterway vessel projects. MARAD has incorporated this factor in the final rule in the "Basic Feasibility" section of its Economic Soundness Requirements (§ 298.14(a)(1)(v)). Another factor—"Other relevant criteria"—contained in the legislation, has also been added (§ 298.14(a)(1)(vi)).

As noted above, several commenters urged that a five year economic projection rather than a long-term projection should be used in making economic soundness determinations. The amending legislation has now disposed of this issue by mandating consideration of the market potential for the employment of the vessel over the life of the guarantee. Therefore, in addition to analysis of the projected market during the early years of a project, MARAD will analyse market potential over the entire life of the proposed guarantee.

The final rule does not include operating expense guidelines because MARAD views this subject as a matter for internal interpretation and implementation based on current economic and industry conditions. Under any circumstances, no submission from a commenter proposed specific internal operating expense guidelines to be included in the regulation.

MARAD, based on its analytical experience with the data it uses believes such data is credible.

Section 298.14 would require submission of various types of marketing information, including applicant expectations for the market's future. We believe the information submitted will reflect marketing strategy. Marketing strategy information is also requested on Title XI applications.

Objective Criteria. Several commenters argued that the proposed objective criteria would not be sufficiently flexible since they do not take into account such subjective factors as marketing skills, operating efficiency and management experience. Many of the same commenters maintained that the requirement that long-term demand for a project must exceed supply is too restrictive or an oversimplification. They claimed that the short-term market may offer more credible evidence of economic soundness.

Many commenters criticized the requirement that internal rate of return (IRR) and the net present value of the projected cash flow be shown on the grounds that those: (1) Do not take into account overall operations; (2) do not reflect the credit of the applicant; and (3) are not sufficiently flexible. The commenters claimed that better economic soundness indicators exist than IRR and net present value of the projected cash flow including: (1) Current dollar projections for debt coverage; (2) analyses using a computation of the ratio of earnings to fixed charges; and (3) cash flow projections sufficient to cover operating costs and debt service.

A few commenters suggested that the projected return should be 15 percent on an "all-equity" basis.

MARAD disagrees that the provision for use of objective criteria will prevent flexibility in evaluating applications. The consideration of objective criteria does not preclude consideration of other less objective factors, such as particular characteristics possessed by an applicant, e.g., marketing skills, operating efficiency and substantial management experience. The objective criteria are merely minimum requirements that must be met by each applicant, regardless of whatever other qualifications the applicant may possess.

MARAD also disagrees that the requirement that the long-term demand exceed the vessel supply is too restrictive or oversimplified. MARAD believes that an evaluation of long-term demand/supply projections is essential. In most cases, the obligations to be guaranteed are long-term. That fact, alone, requires a long-term demand/supply determination. In addition, the short-term market will be considered in evaluating the overall prospects of the project. In those instances where the demand and supply are equal or almost equal in the short-term, some additional equity or other financial assurances would be required to support the project during this period.

Comments were specifically invited in the NPRM on the relative merits of the use of either an internal rate of return analysis or net present value cash flow analysis or both, in evaluating Title XI applications. All comments on the use of both discounted cash flow methods were negative. Commenters stated that other indicators (e.g., operating or marketing efficiency) were more appropriate and that the use of discounted cash flow information to determine creditworthiness was not relevant.

MARAD had decided not to adopt the proposed net present value cash flow analysis requirement. MARAD believes that use of the other economic soundness criteria will produce adequate cash flow information for a project.

The requirement for an internal rate of return analysis, as a part of the regulatory scheme, has just recently been studied as a possible requirement for evaluating economic soundness. MARAD has decided to adopt the internal rate of return requirement, as proposed, in the final rule although procedures for its calculation are in the related NPRM that will be published simultaneously. The NPRM requests comments on calculation procedures for a ten percent internal rate of return based on total project cost and if adopted, these procedures would be provided for in paragraph (b)(4) to implement (b)(3) of § 298.14, the rule. After MARAD reviews the comments received in response to the NPRM, MARAD will expeditiously make a decision on that rulemaking.

MARAD believes that a projected return of ten percent is an adequate standard of profitability and sees no reason to require a 15 percent return. An internal rate of return based on total project cost would be identical to that produced by a return based on all-equity. In both cases, the base for calculation is the total project investment outlay.

Purchase of existing equipment. Some commenters urged that the potential for purchasing existing equipment should not be one of the objective criteria for an economic soundness finding as: (1) The up-to-date technology, productivity and efficiency of new ships should be evaluated; (2) newer vessels may be needed for long-term requirements; (3) new construction should be encouraged; (4) other market factors are more important.

MARAD believes that companies requesting financing of new vessels under Title XI should consider the potential for purchasing existing vessels of a reasonable condition and age that may be available from existing Title XI obligors. If suitable vessels are available, then it is possible that the

market would be less likely to support the construction of new vessels.

The final rule states that the Secretary, in evaluating project applications, shall also consider whether an application provides for the acquisition of vessels, currently financed under Title XI, by the assumption of the total guaranteed obligation. The regulation does not *require* that existing vessels be used. However, since the availability of existing vessels is, among other things, an indication of the extent, if any, of oversupply of vessels, the regulation does require that the use of existing vessels be *considered* by the company and MARAD.

Unnecessary information and disclosure. A few commenters claimed that requiring identification of seamen's unions unnecessarily intrudes on private enterprise management. A few other commenters maintained that requiring fuel costs and identification of ports of purchase is unrealistic for the transportation trades. One commenter urged that MARAD disclose economic studies and assessments of existing equipment and define "sensitivity analysis."

Crew costs must be projected to enable application evaluation. Union agreements provide a firm indication of those costs. Fuel costs and purchase ports are essential cost data for calculating breakeven rates and evaluating the financial condition of the applicant. Therefore, the information required by the rule concerning seamen's unions is essential to determination of whether a project is economically sound and is not an unnecessary intrusion on private enterprise management. In the past, MARAD has requested inclusion of this information on the application form, in any case.

MARAD's assessments of existing equipment and economic and financial analyses all are based on confidential commercial information and staff views. Disclosure of such information would jeopardize the Government's continued access to confidential information, could harm applicants submitting such information competitively and could inhibit the free flow of staff advice to MARAD decision makers. For these reasons, MARAD will not modify its proposal to authorize disclosure.

A sensitivity analysis identifies the degree of fluctuation in the cash flow of the project resulting from changes in certain variables, e.g., applicant's historical market share, past market fluctuations, availability of long-term charters, and potential Government actions.

Notice of available equipment. Some commenters stated that MARAD should state in the regulation that there will be a public notice of available or potentially available equipment. These commenters believe that an applicant should be required, in demonstrating economic soundness, to give details of its potential for purchasing existing equipment of a reasonable age and condition from existing Title XI obligors.

MARAD, as a routine procedure, gives, and will give, notice of available equipment, i.e., vessels, through newspaper advertisements, mailings, and personal contacts with potential purchasers. A change in the provision, as proposed, is not considered necessary by MARAD, since the information will continue to be publicly available.

Section 298.15 Investigation fee.

Fee rate. A substantial number of responses opposed the proposed flat investigation fee of ½ of 1 percent of the guaranteed amount. These objections are summarized as follows:

The proposed increase is not justified and represents an unreasonable burden on applicants. This increase could weaken the strength of the Title XI loan portfolio by discouraging financially strong applicants who could arrange private financing at more advantageous terms.

The commenters also stated that the flat fee structure is unreasonable in that it increases the fee payable in direct proportion of the guarantee amount, when, in fact, the costs associated with application processing do not rise significantly as the guarantee amount increases. Under this proposal, applicants with large guarantees would subsidize applicants with smaller obligation amounts.

Other commenters believed that MARAD should either: (1) Fix a flat fee based on a historical cost analysis of the average cost of an investigation; or (2) establish a two-tiered fee structure with a higher percentage fee applicable up to certain guarantee amounts, and a lower percentage fee applicable to guarantee amounts in excess of this level.

Some commenters argued that legal precedent establishes that a Federal agency cannot impose user charges in excess of the reasonable costs incurred by that agency in performing the service (investigating the application) for which charges are made. Others argued that MARAD has not established that an increase of this magnitude is needed to cover costs incurred.

Several favorable comments also were received: MARAD is entitled to recover fully the costs of processing applications; the new fee structure may help discourage frivolous applications.

Although generally unfavorable, most comments seemed to accept the implicit assumption that investigation fees should fully cover the administrative costs incurred by MARAD to process applications. MARAD has found that the present fee rates have not been sufficient to cover these costs. Therefore, MARAD believes that an increase is reasonable and necessary. As several commenters pointed out, the costs incurred do not increase in direct proportion to the guarantee amount. The present breakpoint of $1,000 for the first $300,000 and ⅛ of one percent for all amounts in excess of $300,000 is, nevertheless, outdated since the ⅛ of one percent rate has not been sufficient to cover all costs. As a result, a new formula is needed that both covers costs and avoids undue penalty to companies applying for larger amounts.

The final rule retains the sliding scale structure, but the investigation fee is fixed at ½ percent of all guarantee amounts up to and including $10,000,000, and ⅛ of one percent of all guarantee amounts in excess of $10,000,000. This adjustment in the rates will help overcome both the underfunding and fairness issues. For fiscal 1983, $10 million was the midpoint in the range of obligation guarantee amounts (six were over $10 million, six were under $10 million).

For the past three fiscal years, the average annual investigation cost to MARAD has been $1.5 million. Based on the $600 million budgeted for new commitments in FY 1984, and assuming the historical distribution of large and small applications within this amount, the adjusted fee rate scale would yield $1.4 million in income, which substantially covers, but does not exceed, program costs, while the current fee rates would yield only $765,000.

Therefore, MARAD expects that the adoption of the adjusted fee scale will reasonably cover the cost of investigating applications, and that the additional cost would be marginal to the applicant when amortized over the term of the guarantees. Using the previously proposed flat fee, the amount charged to applicants would be approximately four times the amount now charged, and would result in receipts substantially in excess of program cost.

Section 298.17 Evaluation of applications.

Evaluation Priorities. Many commenters believed that a priority system is not necessary.

Several commenters opined that the Act does not permit designation of priority by vessel type. With respect to the evaluation of applications, they claimed that there should be no priority based on vessel-type or shipyard. The same commenters claimed that the priorities proposed (vessels capable of being military auxiliaries and yards within the mobilization base) are highly discriminatory to inland vessels and shipyards.

A few commenters argued that the acquisition of an existing Title XI vessel should not be granted priority over new construction. One commenter noted that there may have been an inadvertent omission of a priority for guarantees shorter than the usual terms. Many commenters agreed that the regulation appropriately establishes priorities.

MARAD disagrees with the comments opposing evaluation priorities, except for those urging elimination of evaluation priorities for applications tied to ship construction in the defense mobilization base. For the reasons set forth in the explanation of section 298.3, MARAD accepts those comments and has decided not to include evaluation priority for applications for vessels constructed in the defense mobilization base in the final rule. MARAD agrees with the merits of the commenter's suggestion on priority for guarantees of shorter than usual terms. MARAD prefers loans of shorter maturity. A provision has been added that would give evaluation priority to such guarantees.

As stated before, MARAD has authority to set evaluation priorities, delegated as part of the Secretary's authority to guarantee ship financing obligations. The priority factors established in no manner contravene the provision in section 1103(f) of the Act that no vessel eligible for guarantees shall be denied eligibility because of its type. The system of evaluation priorities does not mean that applications that do not fall into one of the priority categories will be denied. If these applications meet the statutory and regulatory requirements, they may be approved, assuming that sufficient commitment authority remains. The priority system for evaluating applications does not preclude the evaluation of other applications, but only affects the chronological order of the evaluation. Finally, it should be noted that there is no ranking among the evaluation priorities. For instance, there is no policy that applications involving acquisitions of existing Title XI vessels are to be preferred over applications involving new constructions.

Section 298.20 Terms, redemption and interest rates.

Economic Lives. One commenter maintained that the Secretary should determine more realistic economic life assessments for certain vessels, such as supply vessels.

The Act provides that the Secretary determine economic soundness and determine the maturity for obligations, not to exceed 25 years from delivery. Under that authority, the Secretary establishes policies regarding the "economic life" of particular vessel types. Currently, crewboats and tug/supply vessels are permitted a maximum mortgage maturity of 15 and 20 years, respectively. A separate rulemaking would be required to address this issue. If MARAD decides to change those policies, an appropriate rulemaking will be instituted.

Denial of Certain Applications. Some commenters urged MARAD not to approve any application for a specific vessel class if MARAD owns vessels of that class from previous foreclosings. Commenters also suggested that MARAD approve only applications for operation of United States-flag vessels in the United States foreign and international trade.

Section 1103(f) of the Act requires that no vessel eligible for guarantees shall be denied eligibility because of its type. That effectively precludes the type of blanket exclusions from the Title XI program sought by these commenters. Further, the requirement in section 298.14 that the applicant consider the potential for purchasing existing equipment addresses the concern of the first comment.

Section 298.28 Advances.

Terms of the Advance: Interest rate. Several commenters urged that the interest rate on the advance should be the market rate.

With respect to the interest rate on the advance, the proposed regulation is identical to the existing regulation. Under the existing regulation, the interest rate for an advance is the higher of the interest rate on the underlying obligation or the rate charged the Federal Ship Finanicing Fund (Fund) on Treasury loans plus an amount equal to a Guarantee Fee of one percent. If this latter market interest rate were less than the interest rate on the guaranteed obligations and the interest rate for an advance were always set at the market rate, the rate would serve as an incentive to applicants to seek an advance rather than to secure commercial funding or defer principal payments (at the existing rate on the obligations). MARAD does not consider it desirable to encourage requests for advances and, thereby, is providing an incentive to companies to seek private financing.

Terms of the Advance: Guarantee fee. Several commenters urged that the guarantee fee on the outstanding Title XI obligations relating to the advance not be increased to a rate of one percent.

The proposed regulation provided that, as a further condition of the advance, the guarantee fee required to be paid by the obligor on the outstanding Title XI obligations relating to the advance would be at the rate of one percent. Presently, the guarantee fee for financially troubled companies requesting advances is, in all likelihood, already one percent because of the Secretary's increased risk. MARAD believes that, under the final rule, the guarantee fee rate should remain at one percent until an advance is repaid because of the increased risk associated with it.

Advances—General. One commenter stated that the regulation on advances is too detailed. One commenter urged that the regulation be more restrictive and comprehensive. One commenter said that a notice to MARAD of reasonable offers to buy the equipment should be required in the regulation. Some commenters suggested that the regulation should provide authority to MARAD to foreclose on the equipment so that it may be sold to new owners. One commenter suggested that a two year work-out period for advances is arbitrary.

One commenter urged that the cost savings to the government resulting from the termination of ODS payments should be considered in lieu of making advances. Another commenter stated that a specific provision should be provided in the regulation for advances whose sole purpose is to maintain existing Title XI obligations even if the obligor does not qualify for an advance. The commenter cited a past Title XI bankruptcy situation as an example.

Some commenters believed that advances have not accomplished the purpose intended. Another said that the agency should proceed to foreclosure if there is a default and set forth guidelines of when such action should be taken. Several commenters urged that MARAD apply the same financial and economic standards that a commercial bank would employ in deciding whether to provide loans to assist financially troubled shipowners through their difficulties. Certain commenters suggested in their comments that any

financially troubled shipowner that may make a request to MARAD for an advance should explore the availability of commercial loan assistance.

Based on past experience, MARAD believes that advances are appropriate in certain circumstances and that the public should be advised of the circumstances under which advances would be made and the procedures for obtaining advances.

MARAD disagrees that the provisions on advances are too detailed. It believes specific criteria were needed for use in applying for and qualifying for advances. MARAD believes that this regulation is much more comprehensive than the existing rule, but disagrees that the advances provision should be more restrictive. The provisions reflect a firm policy approach while permitting flexibility.

Since MARAD has not yet paid the guarantee of Title XI obligations when an obligor applies for an advance, MARAD is not legally able to foreclose. However, the regulation does require the applicant to describe all the actions it has taken to alleviate the difficulties leading to the need for the advance. This information indicates any efforts the applicant has made to sell the equipment and what offers have been received.

The funds to pay operating-differential subsidies (ODS) are paid pursuant to contracts authorized by Title VI of the Act and come from appropriations made annually. This statutorily authorized funding and contract framework are specifically intended to promote and maintain U.S.-flag shipping services. On the other hand, funds to make advances come from the Fund established by Title XI of the Act and are composed of investigation and guarantee fees paid by Title XI recipients and interest and income generated by those fees. The purposes of the two programs are different and distinct.

While MARAD makes every effort to give appropriate consideration to all the factors present in a request for advances, MARAD des not believe that this regulation should require denial of Title XI advance requests if ODS payments could be terminated and vessels could be sold to effect a cost savings comparable to the amount of the advance requested. MARAD cannot use this regulation to affect or modify the contract between the ODS recipient and this agency.

MARAD disagrees that advances have not accomplished the purpose intended. Advances permit the applicants time to recover from short-term difficulties, preserve favorable interest rates and provide opportunity for possible sales to stronger companies. When MARAD does proceed to foreclosure after default, however, such action is subject to applicable bankruptcy law and litigation constraints. If favorable sales opportunities are offered to the obligor prior to foreclosure sale, they are investigated and considered by the obligor and MARAD. MARAD does not believe it is necessary to include a provision on foreclosure, in the final rule, since that is governed by other applicable Federal laws.

No formal rule governing advances in bankruptcy cases is possible because of the unique and complex problems associated with bankruptcies. Under bankruptcy law, the debtor is not in complete control of its own affairs, but is subject to the jurisdiction of the bankruptcy court. Moreover, the creditor is stayed from exercising its rights and remedies against the debtor or its collateral. Thus, MARAD needs maximum flexibility to protect its interests in bankruptcy situations. In other than bankruptcy situations, MARAD believes that the requirements being adopted should be met or in the absence of aid from another source, upon default, MARAD should recoup the amounts paid, to the extent possible, by proceeding to foreclose on the collateral.

MARAD decided against any regulatory provision for publishing notice of reasonable offers to buy Title XI guaranteed equipment. MARAD advertises for the sale of Title XI equipment in foreclosure proceedings, and does publish notice of availability of Title XI equipment obtained after foreclosure. Since time is often of the essence for bids received pursuant to published notices, further publication of offers to purchase is neither possible nor practicable. Moreover, there are situations where a requirement to publish might preclude a sale made clearly in the Government's interest and ultimately result in a transaction less favorable to it.

MARAD disagrees that a two year work-out period is arbitrary and continues to support it. That time period is considered sufficient to weather any temporary financial difficulty that a Title XI company may be facing.

Section 298.35 Reserve fund and financial agreement.

Covenants. One commenter suggested that to conform with changes on special financial requirements, MARAD should relax financial covenants, such as the the requirement to build up cash reserves, that are applicable to alternative financial requirements.

MARAD disagrees that financial covenants should be relaxed when special financial requirements apply. MARAD believes that these requirements should continue to be a part of the regulation in order to ensure that additonal financial safeguards are available to the Secretary. The Secretary continues to have the discretion not to apply such covenants when justified for particular situations (§ 298.35). For that reason, there will be no change in the provision as proposed.

Section 298.36 Annual guarantee fee.

Most commenters opposed a flat 1 percent guarantee fee. Some commenters favored the flat 1 percent rate.

The 1983 proposed rule provided for a fixed one-half of one percent as a guarantee fee rate prior to vessel delivery and a fixed one percent as a guarantee fee rate following vessel delivery.

Pub. L. 98-595, enacted October 30, 1984, provided for the use of a guarantee fee formula based on the range of creditworthiness among obligors and to be included in the regulations adopted by the Secretary for computing obligors' guarantee fees. The statutory language, as an amendment to section 1104(e) of Title XI of the act, is:

> Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).

The effect of the Congressional language in the foregoing amendment to section 1104(e) is to preclude the use of fixed guarantee fee percentages such as those proposed in the NPRM. The final rule, therefore, does not contain a provision adopting fixed fee rates. Because MARAD's present regulations (§ 298.36) provide for a guarantee fee to be based on assessments of creditworthiness, it will continue with that formula.

Section 298.38 Partnership agreements.

Limited Partnerships. One commenter believed that limited partners, as well as general partners, should share in the obligations and responsibilities of partnerships because limited partners benefit in various ways from the partnership form of business organization.

MARAD disagrees that limited partners should share in all partnership

obligations and responsibilities. The limited partnership is a legally-sanctioned and well-established form of business organization which allows investors, as limited partners, to risk their specific equity contribution and gain certain profit and tax benefits while avoiding the risk of assuming all partnership obligations and responsibilities. When applying for Title XI guarantees, such a partnership is subject to the same statutory and regulatory standards governing management, operating ability and experience, financial qualifications as other forms of business organizations participating in the program.

Partnership Requirements. One commenter believed that the proposed partnership requirements should be provided in the security agreement between the obligor shipowner and the Secretary, not in the partnership agreement itself. This commenter argued that enforcement of the requirements can be assured adequately by providing in the security agreement that a failure to comply with a partnership is a default under the security agreement to which the Secretary is a party. The commenter also argued that there are insufficient material differences between a corporation and a partnership to justify the incorporation of certain Title XI requirements in the partnership agreement.

MARAD disagrees with the comment that the partnership requirements should not be placed in the partnership agreement. The partnership agreement is a contract which governs the partnership, its basic organizational structure and the relations among all the partners, including the conditions of partner entry, withdrawal and removal. It is also the document setting forth the financial obligations of the various partners to the partnership. Since it is a contract, these conditions and terms may be changed only by mutual agreement and affect the basic nature and existence, and scope of the partnership. In the NPRM, MARAD proposed that, to ensure the continued existence of each partnership and its compliance with certain essential requirements and terms upon which the Title XI transaction is premised, all partners, as contracting parties to the partnership agreement, must incorporate these requirements in the partnership agreement itself.

MARAD cannot rely on the ability to call a default solely under the security agreement as the commenter has suggested. By placing certain Title XI requirements in the partnership agreement, MARAD restricts the powers of the partners to take certain actions (e.g. dissolution of the partnership participating in the project) that affect the Title XI obligation. If these partnership restrictions were placed only in the security agreement, MARAD would be compelled to call a default on the obligation when any requirement was breached. Such an action would result in a premature payment by MARAD of its guarantees and foreclosure by MARAD on the collateral with the resulting possibility of adverse financial consequences for the agency.

Section 298.39 Exemptions.

MARAD has decided to rename the waiver clause provision, which was included in the NPRM published in August 1983, the more specific appellation of "exemption clause."

The text of the provision has been modified to show that exemptions would only be granted to applicants in exceptional cases and after written findings of, among other things, a national emergency that makes an exemption necessary, or when the Government's liability will be substantially relieved. The renomination and modification are to ensure that exemptions are based on unique, individual requests pursuant to a documented demonstration of special circumstances. MARAD believes that an agency's authority to exempt applicants from certain criteria in unique, limited or extraordinary circumstances derives from its well-founded authority to regulate. *U.S.* v. *Allegheny Ludlum Steel Corp.*, 92 S.Ct. 1941, 406 U.S. 742, 32 L.Ed. 2d 453 (1972); *George A. Rehman Co.* v. *U.S.*, 133 F.Supp. 668 (D.D.S.C. 1955).

Moreover, MARAD believes that this clause is consistent with the purpose for revising these regulations—the strengthening and tightening of the criteria for participation in the Title XI program.

Section 298.43 Applicability of regulations to pending matters.

A few commenters argued that neither pending applications nor pending letter commitments should be subject to the revised regulation.

To exclude pending (unapproved) applications from revised requirements would give those applications preference over those that may be filed after the effective date of this rule. The date of filing should not unfairly affect applicability of the regulation. On the other hand, existing guarantees and letter commitments are agreements to which the Government is a party and, therefore, they will not be affected by the revised regulation.

Regulatory Evaluation and Regulatory Flexibility Act Determination

This rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation Order 2100.5, dated May 22, 1980. It is not considered to be a major rule because it would not: have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies or regions or have a significant adverse effect on competition or any other aspects of the economy.

MARAD's economic evaluation of this final rule is summarized as follows: The revision to the regulations establishes additional information requirements and more stringent criteria for evaluation of Title XI applications. The time requirements in the rule will require a decision on each application within one year. Reduction of processing time will result in reduced interest and carrying costs to the applicant. It is estimated that, based upon the $600,000,000 budgeted for Title XI guarantees during a fiscal year, the reduction in processing time could save applicants approximately $2.25 million in interest charges per fiscal year.

The final rule is not expected, however, to have a significant cost effect on the maritime industry. Most of the additional information proposed is already requested by MARAD and most of the proposed analysis is already performed by MARAD and/or the applicant. There will be a slight incremental increase in cost to the Government and applicants attributable to revision of the application form and submission of the requested information. The Government will incur a one-time cost due to the need to revise the application form. This is estimated to be approximately $88. Based on an estimated cost to each of the 40 (based on an historical annual average) applicants of $725 to process a current application it is estimated that, in order to comply with revised requirements, it will cost each applicant an additional $80.60 ($3,225 annual total incremental cost).

The increase in fees will result in an increase in costs to the applicants. The investigation fee, for example, on a $10 million obligation, will be, approximately, an additional $36,000. The current fee, based on a $1,000 filing fee covering the first $300,000 of obligations and ⅛ of 1 percent on the remainder, is $13,125, whereas, under the revision, the investigation fee is ½ of

1 percent or $50,000. For the past three fiscal years, the average annual investigation expense to MARAD has amounted to $1.5 million. Investigation fees from applicants have amounted to only approximately $765,000. Using the budget figure of $600 million in total new commitments, and assuming the historical distribution of large and small applications within this amount, the new fee structure would yield $1.4 million in income, which would substantially cover program costs.

Although the final rule provides for priority in the processing and evaluating of applications in the program, the current, projected lack of demand for such vessels is expected to mitigate any possible cost impact.

Given the small incremental increase relative to the overall financing costs, it is not anticipated that these revisions will have more than a marginal impact on the maritime industry.

The rule is considered to be significant under DOT Order 2100.5 because it concerns a matter in which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the existing Small Business Administration criteria for a small business under the classification of "transportation and warehousing" [13 CFR 121.3–3–10(f), the Maritime Administrator certifies that this rulemaking would not, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), exert a significant economic impact on a substantial number of small entities.

Pursuant to DOT Order 2100.5, a final Regulatory Evaluation has been prepared and will be made available for public review in the docket established for this rulemaking. The final Regulatory Evaluation concludes that these revisions to the existing regulation will not have a significant adverse impact upon the maritime industry; and that, by streamlining and clarifying Title XI procedures, the revisions will be an overall benefit to the maritime industry.

Paperwork Reduction Act

This rule does include expanded requirements for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and those requirements have been approved by OMB (OMB Control No. 2133–0018).

These additional information collection requirements will result in an estimated increase in cost to the Federal government of $88.00. It is estimated that the increase in administrative cost for all applicants would be $3,225 annually in total.

List of Subjects in 46 CFR Part 298

Banks, banking, Loan programs—transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts, Vessels.

PART 298—[AMENDED]

Accordingly, 46 CFR Part 298 is amended as follows:

1. Section 298.3 is amended by removing the final sentence of paragraph (a), revising paragraph (b) and adding a new paragraph (e) to read as follows:

§ 298.3 Application.

* * * * *

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least six months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 30 day period after submission, the Secretary shall perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data are required, the Secretary shall notify the applicant promptly in writing. The applicant shall meet requests for additional information in a timely manner. If at the end of nine months from the submission date, unless such time period is extended within the discretion of the Secretary, the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, the Secretary shall notify the applicant in writing that the application will be dismissed without prejudice. If an application is not approved within one year from the submission date, unless such time period is extended by the Secretary, the Secretary shall notify the applicant in writing that processing of the application is terminated and that the applicant may reapply.

(2) *Time requirements for documentation.* An applicant to whom a Letter Commitment has been issued shall submit four sets of the documentation to the Secretary for review. The documentation shall be submitted to the Secretary for review at least six weeks prior to the anticipated closing to afford the Secretary time to complete an adequate review of the documentation. The applicant shall utilize the standard form of documentation which will be provided by the Secretary.

(3) *Processing applications.* In processing applications, the Secretary shall consider the different degrees of risk involved with different applications.

(4) *Additional assurances.* For those applications not involving well established firms with strong financial qualifications and strong market shares seeking financing guarantees for replacement vessels in an established market, in which projected demand exceeds supply, the Secretary may require additional assurances prior to approval, such as firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interest on other property and similar arrangements.

* * * * *

(e) *Priority.* The Maritime Administration shall give priority for processing applications to vessels capable of serving as a naval and military auxiliary in time of war or national emergency, and requests for financing construction of equipment or vessels less than one year old as opposed to the financing of existing equipment or vessels that are one year old or older. Any applications involving the purchase of vessels currently financed under Title XI will also receive priority consideration for purposes of processing the assumption of the obligations as will applications from those willing to take guarantees for less than the normal term for that class of vessel.

2. Section 298.12 is amended by revising the title, designating the present paragraph as paragraph (a), and adding a subject heading thereto, and by adding new paragraphs (b), (c), (d), to read as follows:

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* * * *

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant is an incorporated company, it shall submit the following identifying information:

(i) Exact name of applicant and tax identification number;

(ii) State in which incorporated and date of incorporation;

(iii) Address of principal executive offices and of important branch offices, if any;

(iv) The name, address, nationality and number and type of capital shares owned by each officer and director of the corporation.

(v) The name, address, nationality, and number of capital shares owned by each person not named in the paragraph (b)(1)(iv) answer, owning of record or beneficially 5 percent or more of any class of capital shares issued by the applicant;

(vi) A brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights with respect to any share of the applicant are owned, controlled or exercised, or whereby the control of the applicant is in any way held or exercised, by any person not the holder of legal title to such shares. (Give the name, address, nationality, and business of any such person, including the form of the organization.); and

(vii) A certified copy of the certificate of incorporation, charter and by-laws.

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* If the applicant is a partnership, joint-venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of partnership, association, or unincorporated company, and tax identification number;

(ii) Business address;

(iii) Date of organization;

(iv) Name of partners (general and special) of the partnership or trustee and holders of beneficial interest in the association or company;

(v) Equity interest or percentage of capital contribution of each partner, trustee, or beneficial owner;

(vi) If any partners are individuals, provide:

(A) Date of birth of each;

(B) Place of birth of each; and

(C) Nationality of each;

(vii) If a partner is a corporation, provide information requested in paragraph (b)(1) of this section.

(viii) Certified copy of Partnership or Joint Venture Agreement, as amended; and

(ix) Offering Memorandum of Limited Partnership.

(3) *Individual.* If the applicant is an individual, he(she) shall submit the following identifying information:

(i) Name;

(ii) Address;

(iii) Date of birth;

(iv) Place of birth;

(v) Nationality;

(vi) Principal place of business; and

(vii) Trade name under which business is conducted.

(c) *Applicants: business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of applicant and of any predecessor of the applicant. If any change in the principal business activities is presently contemplated (whether in connection with the work to be financed by the guarantees applied for, or otherwise), applicant shall give a brief statement of the nature and circumstances thereof;

(2) A list of all companies or persons (hereinafter referred to as related companies) that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, the applicant. Also indicate the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart. Specify whether any related companies have previously applied for or received any Title XI assistance;

(3) A statement of whether or not during the past 5 years the applicant, or any predecessor or related company, has been in bankruptcy or in reorganization under the Federal Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether or not any substantial property of the applicant or a predecessor or related company has been acquired in any such proceedings or has been subject to foreclosure or receivership during such period, and details of all such occurrences; and

(4) A statement of whether or not the applicant or any predecessor or related company is now, or during the past 5 years has been, in default under any agreement or undertaking with others or with the United States or guaranteed or insured by the United States.

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the applicant; and

(2) The name and address of each organization engaged in business activities related to those carried on or to be carried on by the applicant with which any person named in answer to paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the prinicipal properties of the applicant employed in its business, other than vessels, describing encumbrances, if any;

(2) A statement with respect to each vessel owned by the applicant, or operated by it under charter, stating name, gross tonnage, net tonnage, deadweight tonnage, age, type, speed, registry, cargo capacity and number and type of cargo units (container, trailer, etc.); and

(3) A summary statement which addresses the services, routes, or line (including ports served) on which the applicant operates any of the vessels owned or chartered by it. Also, a schedule and tonnage of cargo carried by the applicant during the two preceeding years, the units carried (containers, barges, passengers, etc.) and the cargo capacity utilization factor experienced.

(f) *Operating ability.* The applicant shall submit a detailed statement showing its ability to successfully operate the vessel(s), including name, education, background of, and licenses held by all shore management personnel concerned with the physical operation of the ships owned by the applicant or proposed for construction. If not now an operator of vessel(s), the applicant shall indicate a proposed organizational structure of key operating personnel or the name of the proposed operating agent. If now the owner and/or operator of ships, the applicant shall furnish data as to union affiliations and existing contracts necessary to the management and operation of the vessel(s) covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which company acts as agent. If a company other than the applicant is designated to operate the vessel(s), then the above information shall be provided for that company, together with a copy of the proposed operating agreement(s).

3. Section 298.13 is amended by inserting the paragraph designation "(a)(3)," after the word "paragraphs" and before the paragraph designation "(d)" in paragraph (g), by revising paragraph (a) and the introductory text of paragraphs (e), (e)(1), and (e)(2) as follows:

§ 298.13 Financial requirements.

(a)(1) *In general.* To be eligible for guarantees, the applicant and/or the parent organization (when applicable), and any other participants in the project having a significant financial or

contractual relationship with the applicant shall submit information, respectively, on their financial condition. This information shall be submitted at the time of the application and supplemented as subsequently required by the Secretary. In addition, the applicant shall submit information satisfactory to the Secretary that financial resources are available to support the project which is the subject of the Title XI application.

(2) *Cost of the project*—Applicant shall submit the following cost information with respect to the project:

(i) A detailed statement of the estimated actual cost of construction, reconstruction or reconditioning of the vessel(s) including those items which would normally be capitalized as vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to vessel(s) delivery. Each item of foreign equipment and services shall be excluded from Actual Cost unless a waiver is specifically granted for the item. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

(ii) A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(iii) A detailed statement showing any other costs associated with the project which were not included in paragraphs (a)(2) (i) and (ii) of this section, such as: legal and accounting fees, printing costs, guarantee fees, vessel insurance, underwriting fees, fee to affiliates, etc.

(iv) If the project involves refinancing, the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and supplemental schedules shall be submitted at the time of filing the application.

(3) *Financing.* The applicant shall describe, in detail, how the costs of the project (sums referred to in paragraph (a)(2) of this section) are to be funded and the timing of such funding. The applicant shall include any vessel trade-ins, related or third party financings, etc. The applicant shall also provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved. If the applicant intends to utilize co-financing (involving a blend of Title XI and private financing for the 75% debt portion), the terms and conditions of such financing shall be subject to approval by the Secretary. The applicant shall demonstrate with financial statements that at least 25 percent of the construction costs of the vessel(s) will be in the form of equity and not additional debt. The applicant shall disclose all of the vessel(s) financing in the format as prescribed by the Title XI application procedures.

(4) *Financial Information.* The applicant shall submit the following additional financial statements with respect to both the proposed Title XI project and the overall operations of the applicant, footnoted to explain the basis used for arriving at the figures:

(i) The most recent financial statement of the applicant, its parent and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If the applicant is a new entity or is to be funded from or guaranteed by external source(s), it shall provide the above mentioned statements for the funding source(s);

(ii) A pro forma balance sheet of the applicant as of the estimated date of execution of the guarantees reflecting the assumption of the Title XI obligations, including the current liability;

(iii) A schedule of amortization of all existing debt (Title XI or otherwise) of the applicant for the period in which the guarantees are to be outstanding; and

(iv) A sources and uses statement for the first full year of operations and the next four years, including a clear source of funding for the payment of all debt when due.

* * * * *

(e) *Special financial requirements at closing.* If the proposed project involves a leverage lessor, parent company or "hell or high water" charterer committed to financing the debt service for the term of the Guarantees and who meets the primary financial requirement at closing, then with respect to the applicant, the eligibility for Guarantees may be based upon satisfaction of special financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this Part. Special financial requirements are as follows:

(1) *Owner as operator.* Where the owner is the Vessel operator, the special requirements at Closing are as follows:

* * * * *

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the special financial requirements at Closing are as follows:

* * * * *

4. Section 298.14 is revised to read as follows:

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* No Letter Commitment for guarantees shall be given by the Secretary without a finding that the proposed project, with respect to which the Vessel(s) is to be financed or refinanced under Title XI, will be economically sound.

(1) *Basic feasibility factors.* In making the economic soundness findings the Secretary shall consider all relevant factors, including, but not limited to:

(i) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) The market potential for the employment of the vessel over the life of the guarantee;

(iii) Projected revenues and expenses associated with employment of the vessel;

(iv) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(vi) Other relevant criteria.

(2) *Project Feasibility.* The applicant shall state in detail the purpose for the obligations to be guaranteed and shall supplement the application by exhibits deemed to be necessary. The applicant shall submit the following information to demonstrate the economic feasibility of the project over the Guarantee period.

(i) *Relevant market.* A written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(A) Nature and amount of cargo/passengers available for carriage and applicant's projected share (provide also the number of units; i.e., containers, trailers, etc.);

(B) Services or routes in which the Vessel(s) will be employed, including and itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency

time, proposed number of annual sailings and number of annual working days for the Vessel(s);

(C) Suitability of the Vessel(s) for their anticipated use;

(D) Significant factors influencing the applicant's expectations for the future market for the Vessel(s), for example, competition, government regulations, alternative uses, and charter rates; and

(E) Particulars of any charters, contracts of affreightment, transportation agreements, etc. The narrative should be supplemented by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(F) The potential for purchasing existing equipment of a reasonable condition and age that may be available from existing Title XI Obligors, including information regarding—

(*1*) Market assessment concerning the availability and cost of existing equipment that may be an alternative to new construction;

(*2*) The cost of modification, reconditioning or reconstruction of existing equipment to make it suitable for intended use; and

(*3*) Descriptions of any bids or offers which the company had made to purchase existing equipment, especially Vessels which currently are financed with Title XI Obligations including date of offer, Vessels and amount of offer.

(ii) *Revenues.* A detailed statement of the revenues expected to be earned from the project based upon the information in paragraph (a)(2) of this section. The revenues shall be based on a realistic estimate of the Vessel(s) utilization rate at a breakeven rate for the project. A justification for the utilization rate shall be supplied and should indicate the number of days per year allowed for maintenance, drydocking, inspection, etc.

(iii) *Expenses.* A detailed statement of estimated daily vessel expense, including the following (where applicable):

(A) Wages, including staffing (submit itemized staffing schedule and wages, identifying the seamen's unions involved), and aggregated as to straight time, overtime and fringe benefits;

(B) Subsistence cost (indicate cost per person per day);

(C) Fuel cost (specify purchase ports), including estimated fuel consumption at design speed loaded and in port;

(D) Cost of stores, supplies and equipment, segregated as to Deck, Engine and Stewards Departments;

(E) Maintenance and repair cost at midlife of ship (specify in years) segregated as to voyage repairs, special surveys, drydocking and tailshaft removal, annual survey and structural renewals;

(F) Insurance costs, Hull and Machinery, Protection and Indemnity, War Risk and other (an insurance broker's estimate based upon current premium rates, if available, is considered preferable); and

(G) Other vessel expense (indicate items included).

(iv) *Estimated voyage expense:* These items shall include:

(A) Port expense segregated by port as to agency fees, wharfage and dockage and other port expenses;

(B) Cargo expense, segregated as to stevedoring and other cargo expense (show average cost per ton for loading and discharging for each port or geographic area);

(C) Brokerage expense, segregated as to freight and passenger; and

(D) Other voyage expense segregated as to canal tolls and other expense (indicate items included).

(v) *Owner's expenses annually.* These expenses shall be segregated as to:

(A) Interest and amortized principal on mortgage indebtedness;

(B) Estimated government Guarantee Fee; and

(C) Salaries and other administrative expenses (indicate basis of allocations).

(b) *Objective Criteria.* The Secretary shall make a finding of economic soundness with respect to each proposed project based on an assessment of the entire project. In order to be considered for approval, a project must meet the following criteria as determined by the Secretary:

(1) The projected long-term demand (equal to length of financing being requested) for the particular Vessel(s) to be financed must exceed the supply of similar vessels in the applicable markets, based on the Secretary's assessment of existing equipment, similar vessels under construction and the projected need for new equipment in that particular segment of the maritime industry. Such an assessment shall be determined by the Secretary's analysis of the following three elements:

(i) Conformity of the company's projections with supply and demand analyses prepared by the Maritime Administration;

(ii) Availability of charters, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) The applicant's existing market share compared with the market share necessary to meet projected revenues.

(2) A projected cash flow and net income, supported by the findings of paragraph (b)(1) of this section, that is sufficient to meet the projected Title XI debt service requirements and any other debt obligations of the company; and

(3) The internal rate of return analysis shall provide a minimum return of 10 percent when computed, based on the total project cost, and in accordance with paragraph (b)(4) of this section.

(4) [Reserved]

(5) That all prior Title XI advances shall have been paid.

5. Section 298.15 is amended by removing paragraphs (c) and (d) and revising paragraph (b) to read as follows:

§ 298.15 Investigation fee.

* * * * *

(b) *Base Fee.* The investigation fee shall be one-half of one percent on obligations to be issued up to and including $10,000,000 and ⅛ of one percent on all obligations to be issued in excess of $10,000,000. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3 of this part) shall be credited against the investigation fee.

6. A new § 298.17 is added to Subpart B to read as follows:

§ 298.17 Evaluation of applications.

In evaluating project applications, the Secretary shall also consider whether the application provides for:

(a) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(b) The financing of the Vessel(s) within one year after delivery.

(c) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(d) The Guarantees extend for less than the normal term for that class of vessel.

7. Section 298.23 is revised to read as follows:

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Section 1104(a)(1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel, the proceeds of such Obligations shall be

applied to the construction, reconstruction or reconditioning of other vessels or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in Subpart B of this part.

8. Section 298.28 is revised to read as follows:

§ 298.28 Advances.

(a) *In general.* In accordance with the provisions of section 207 and Title XI of the Act, the Secretary shall have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to, principal, interest, insurance and other vessel-related expenses or fees. Such advances or payments shall be made only to protect, preserve or improve the collateral held as security by the Secretary to secure Title XI debt. The applicant making the request for an advance shall demonstrate (with market and cash flow analyses and other projections) that its problems are of a short term duration (less than two years) and that with the help of an advance(s), the applicant would be assisted over its temporary difficulties. In making or committing to make an advance or payment of funds the Secretary shall evaluate the following:

(1) *Company finances.* The applicant shall clearly demonstrate that it has insufficient cash flow, working capital or other financial resources to make the payment and has made a good faith effort to arrange for a transaction acceptable to the Secretary to provide the necessary commercial funding for the payment. Further, the Secretary shall consider the following factors, among others:

(i) The existing financial condition of the Obligor, including the likelihood of liens being filed by creditors;

(ii) The reason for the financial difficulties of the Obligor and whether the problems are the result of economic conditions or actions of the Obligor or both;

(iii) The reasonableness of the financial projections for the Obligor and the expectation that the Obligor's operations will recover; and

(iv) The extent to which company management has taken action to alleviate the difficulties leading to the need for advances.

(2) *Collateral.* There shall be adequate security for the advance. In determining adequate security the Secretary shall evaluate, among other things:

(i) The existing and future market conditions for the Vessel(s) held as collateral after consideration of all potential liens and claims;

(ii) The benefit of preserving the existing Obligations on the collateral; and

(iii) Any other available collateral (i.e., mortgages on other vessel(s), special escrow funds, pledge of stock, charters, contracts, notes, letters of credit, accounts receivable assignments and guarantees).

(3) *Repayment.* The company must have the capacity to repay the advances in a timely manner as well as meeting the other financial obligations imposed as a condition of the advance. The terms of repayment of an advance shall be satisfactory to the Secretary. In determining the Obligor's ability to meet the foregoing the Secretary shall evaluate, among other things:

(i) The expectation of repayment of the advance;

(ii) The ability and willingness of the Obligor to repay the advance on a short-term basis; and

(iii) The Obligor's experience in repaying any prior advance.

(b) *Terms of advance.* The terms of an advance shall be satisfactory to the Secretary and shall include, but not necessarily be limited to:

(1) The interest rate shall be equal to the greater of—(i) the sum of the effective interest rate borne by the Obligations and a Guarantee Fee computed in accordance with § 298.36; or (ii) the sum of the interest rate the Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and an amount equal to the Guarantee Fee provided in accordance with paragraph (b)(6) of this section.

(2) The advance may have a maturity date no later than that of the Obligation(s).

(3) Unless the Secretary otherwise requires, the advance shall have periodic payments of principal and interest, payable to the extent practicable, on the same dates as that of the Obligation(s) with the right of prepayment at any time without premium.

(4) As long as any advance is outstanding, no dividends can be paid without prior written consent of the Secretary provided, however, that if the Obligation(s) and advance(s) are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(5) The advance, both as to principal and the interest relating to the advance of principal, shall be secured by the mortgage and/or other such collateral as the Secretary shall deem appropriate.

(6) As a further condition of the advance, the guarantee fee required to be paid by the Obligor on the outstanding Title XI obligations relating to the advance shall be at the rate of one percent, until such advance is repaid.

(c) *Filing requirements.* Any company that desires to request an advance or other payment, or a commitment to make an advance or other payment from the Secretary for the purposes stated in § 298.28 of this part, shall apply for such assistance as far in advance as is reasonably possible. A request for an advance for principal and interest payments shall be received by the Secretary at least 30 days prior to the initial payment date. A request for an advance of insurance payments shall be received by the Secretary at least 30 days prior to a renewal or termination date. The Secretary may consider requests for assistance with less notice, upon written documentation of extenuating circumstances. Any requests for assistance must be accompanied by supporting data with respect to the need for the advance, that financing assistance has been sought from other sources, that the company is taking and has taken measures to alleviate its situation, financial projections, proposed term of the repayment, current and projected market conditions, information on other available collateral, liens and other creditor information, and any other information which may be requested by the Secretary.

9. Section 298.31 is amended by removing in the last sentence of paragraph (a) the number "21" and inserting the number "10" in its place and adding a new paragraph (c) to read as follows:

§ 298.31 Mortgage.

* * * * *

(c) *Adequacy of collateral.* Under normal circumstances, a First Preferred Mortgage on the Vessel(s) will be adequate security for the Guarantees. If, however, the Secretary determines that the Mortgage on the Vessel(s) in not sufficient to provide adequate security, the Secretary, as a condition to approving the Letter Commitment or processing the application may require

additional collateral, such as a mortgage(s) on other vessel(s) or on other assets, special escrow funds, pledges of stock, charters, contracts, notes, letters of credit, accounts receivable assignments, and guarantees.

§ 298.35 [Amended]

10. Section 298.35 is revised by removing the word "alternative" wherever it appears in the introductory text of paragraph (c) and paragraph (c)(2) and in lieu thereof inserting the word "special".

11. A new § 298.38 is added at the end of Subpart D to read as follows:

§ 298.38 Partnership agreements.

Partnership agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basis areas: (a) Duration of the partnership, (b) adequate partnership funding requirements and mechanisms, (c) dissolution of the partnership and the withdrawal of a general partner and (d) the termination, amendment, or other modification of the partnership agreement without the prior written consent of the Secretary.

12. A new § 298.39 is added to read as follows:

§ 298.39 Exemptions.

The Secretary may exempt an applicant from any requirement of this Part not required by law, in exceptional cases, on written findings that: (a) The case materially involves factors not considered in the promulgation of this Part; (b) (1) a national emergency makes it necessary to approve the exemption or (2) the financial liability of the United States will be substantially relieved; (c) the exemption will not substantially affect effective regulation of the Title XI program, consistent with the objectives of this part; and (d) exemption will not be unjustly discriminatory.

13. Section 298.41(d) is revised to read as follows:

§ 298.41 Remedies after default.

* * * * *

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c) (1) through (6) of this section.

14. A new § 298.43 is added to Subpart E to read as follows:

§ 298.43 Applicability of the Regulations.

The regulations in this part shall be in effect as to all Letter Commitments, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under Part 298 of this title (43 FR 60912) as of the effective date hereof, but shall not affect any Letter Commitments, commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Letter Commitments, guarantees, insurance contracts, commitments for Guarantees or Documentation.

(Secs. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97-31, August 6, 1981; 49 CFR 1.66)

Dated: January 31, 1985.

Approved:

Murray A. Bloom,

Acting Secretary—Maritime Administration.

[FR Doc. 85-5509 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-81-M

Proposed Rules

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

Limes Grown in Florida; Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule specifies new lime size designations to be used in marking containers of seedless limes based on the number of seedless limes in a ten pound sample. This proposal is designed to prevent misrepresentation of the size of seedless limes in containers, facilitate sales of seedless limes between buyers and sellers, and promote orderly marketing of Florida seedless limes. This proposal also updates references to the United States Grade Standards for Florida Limes in the regulation.

DATES: Comments are due by March 25, 1985. The proposed effective date is April 1, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities..

This proposed rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of lime grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposed rule is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by pack under § 911.311 Lime Pack Regulation 9 (7 CFR Part 911). The pack regulation, which is effective on a continuing basis, establishes pack and container marking requirements for fresh limes. This proposal was unanimously recommended by the Florida Lime Administrative Committee.

This proposal would require the marking of containers of seedless limes with one of seven specified lime size designations. These seven size designations are defined in terms of the number of limes in a ten pound sample. Handlers of limes use several different sizes and weights of containers in shipping limes. The committee reports that handlers currently designate lime sizes by count or number of fruit in the container. This has caused some buyer confusion since the number of limes will vary with the size of the container. In some instances, the number of limes in a container has been misrepresented to the buyer. The proposal is designed to alleviate this situation by standardizing lime sizes so that the same lime size designation will be shown regardless of the size and weight of the container in which the limes are packed. These size designations are currently used by many handlers on a voluntary basis. This proposal is necessary to facilitate sales between buyers and sellers of limes and promote orderly marketing of Florida seedless limes.

The proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest and would serve no useful purpose.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—[AMENDED]

The proposed rule would amend paragraphs (a)(1) and (b) in section 911.311 by removing the reference to "7 CFR 2851.1000–2851.1016" and inserting in its place the reference to "7 CFR 51.1000–51.1016" and adds a new paragraph (a)(5) to § 911.311 to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked on the top and two sides, using one inch high numbers, with one of the size designations shown in column 1 of the following table: *Provided*, That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation.

TABLE 1

Column 1 size designations	Column 2 size range
72	68 to 76.
63	60 to 66.
54	51 to 57.
48	46 to 50.
42	40 to 44.
36	34 to 38.
28	27 to 29.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 85–5558 Filed 3–7–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–6]

Proposed Alteration of Transition Area; Litchfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Litchfield, Illinois, transition area to provide airspace determined necessary to accommodate existing conditions.

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

DATES: Comments must be received on or before April 10, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action redescribes the Litchfield, Illinois, transition area to accommodate existing conditions. An NDB Runway 27 instrument approach procedure has been developed for Litchfield Municipal Airport, but the required designated airspace has not yet been depicted on appropriate charts. The additional airspace to be depicted will be the area contained within 3 miles each side of the 274° true bearing from the Litchfield, Illinois, NDB (LTD) extending from the 5-mile radius to 8 miles west of Litchfield Municipal Airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter an existing 700-foot controlled airspace transition area near Litchfield, Illinois.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Litchfield, IL

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Litchfield, Illinois, Municipal Airport (latitude 39°09'50"N, longitude 89°40'36"W), and within 3 miles each side of the 079° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles east of the Litchfield Airport, and within 3 miles each side of the 274° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles west of the Litchfield Municipal Airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.65)

Issued in Des Plaines, Illinois, on February 15, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-5529 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-35]

Proposed Alteration of Jet Route J-174 and Associated Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Jet Route J–174 from Hampton, NY, to Snow Hill, MD, and establish a control area associated with the jet route. This action is an integral part of a major air traffic management program to alleviate air traffic congestion and compression conditions along the east coast of the United States, particularly between the New York and Southern Florida/Caribbean areas.

DATES: Comments must be received on or before April 8, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Airspace Docket No. 84–AWA–35, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, 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) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.161 and § 75.100 of Part 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter J–174 between Snow Hill, MD, and Hampton, NY, with an associated control area. The associated control area is centered on the centerline of the jet route. The FAA has developed a United States east coast traffic management plan to alleviate congestion and compression of air traffic, particularly along the heavily travelled coastal corridor between New York and the Southern Florida/Caribbean areas. The overall objectives of the east coast plan are to adjust inbound/outbound routings along the east coast and the New York Metroplex areas in order to provide the optimum use of airspace and reduce departure and arrival delays between Chicago, New York, Atlanta and Miami. At present, east coast traffic flows are saturated and compressed to the extent that they restrict the movement of traffic into and out of the New York Metroplex. This congestion causes delays to the degree that a substantial portion of all reported delays occur within the New York Metroplex (approximately 25 percent of the national total). The east coast plan is designed to make optimum use of limited airspace resources. One of the constraints to the free flow of traffic along the east coast is otherwise usable airspace designated as offshore warning areas. A warning area is a nonregulatory designation of airspace of defined dimensions over international waters that contains activity which may be hazardous to nonparticipating aircraft.

The FAA recognizes the existence and the need for offshore warning areas. The amended Federal Aviation Act of 1958 is clear in that both air commerce and the needs of national defense must be considered. In addition, Executive Order 10854 extended appliation of the FA Act outside of U.S. jurisdiction under appropriate international agreements and consistent with the requirements of national defense.

In consideration of both civilian air commerce and national defense needs, the FAA is proposing the alteration of Jet Route J–174 and an associated control area. This route is expected to absorb and distribute a substantial portion of inland high altitude air traffic movements while posing minimal impact on warning area airspace. At point of greatest penetration, the jet route and associated control area would extend approximately 15 miles into Warning Area 107A and 8 miles into Warning Area 108A. The FAA considers the availability of Jet Route J–174 as crucial to the success of overall east coast air traffic management. As proposed, the jet route should have minimal impact on Department of Defense activity while providing substantial benefit to all users. For example, for those portions of warning areas penetrated, altitudes would remain available for use by the using agency as follows:

1. Below Flight Level 240 and above Flight Level 410 within Warning Area 108A.

2. Below Flight Level 180 and above Flight Level 410 within Warning Area 107A.

The overall impact to Department of Defense activities is seen as minimal while the advantage to overall air transportation is great. Approximately 500 aircraft movements a day which now utilize inland routings may be expected to use the proposed offshore route. A proportionate share of those movements are expected to be departures from the New York airports, facilitating the flow of arrival traffic to those airports via inland routes. Sections 71.161 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were published in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of these proposals relate to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety; Jet routes and control areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.161 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.161 [Amended]

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; Hyannis, MA, to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

§ 75.100 [Amended]

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; INT Hampton 069° T(082° M) and Hyannis, MA 237° T(252° M) radials; Hyannis; to the INT of Hyannis 080° T(095° M) and Nantucket, MA, 066° T(081° M) radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1346(a), 1354(a), and 1510); Executive order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C. on March 5, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–5720 Filed 3–7–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Withdrawal of Proposed Customs Regulations Amendment Relating to the Customs Service Field Organization—Gramercy, LA

AGENCY: Customs Service, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to extend the limits of the Customs port of entry of Gramercy, Louisiana. The proposal was included as a part of a larger revision of the Customs field organization which updated and consolidated the descriptions of all ports of entry in the New Orleans Customs district. Customs periodically amends its field organization to obtain more efficient use of its personnel, facilities, and resources, but after review of public comment and further analysis of this matter, it has been determined an expansion of the port limits at Gramercy would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

DATE: Withdrawal effective March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

By **Federal Register** notice of October 5, 1983 (48 FR 45409), Customs published a proposed rule designed to update and consolidate the description of all ports in the New Orleans Customs district. The consolidation was a part of Customs nationwide effort to obtain more efficient use of personnel, facilities and resources and to provide better service to carriers, importers and the public. Public comment was invited until December 5, 1983.

Customs adopted the proposal as a final rule by publication of T.D. 84–126 in the **Federal Register** of May 31, 1984 (49 FR 22629). However, the final rule included a slight expansion of the geographical limits of the port of entry of Gramercy, Louisiana. The slight expansion had not been mentioned in the October 5, 1983, proposal.

It was brought to Customs attention that the expansion of the limits of the Gramercy port could have some unexpected adverse impact on several concerns in the Gramercy area. Accordingly, on July 2, 1984, Customs published two **Federal Register** notices relating to this matter. The first notice (49 FR 27142) delayed indefinitely the effective date of the Gramercy expansion. The second notice (49 FR 27172) formally proposed the expansion that had been included in the May 31, 1984, final rule and invited public comment on the matter. The comment period closed August 31, 1984, and Customs has now concluded its review and analysis of all comments received.

Discussion of Comments

There were 18 comments received concerning the expansion, 9 in favor, 9 opposed. Commenters included U.S. congressmen, members of Louisiana state and local government, and representatives of businesses and trade associations.

Some of the proponents of the Gramercy port expansion cited increased convenience of obtaining Customs service while opponents claimed the creation of a clearance obligation in an area now outside port limits would significantly but needlessly increase both Customs workload and shippers' costs. The main reason the expansion had been requested was to bring the Gramercy port limits into line with the state determined boundaries of the Southwest Louisiana Port Commission. A comment received from a Louisiana state senator urged Customs to withhold any action on Gramercy while the Louisiana Ports Study Commission completed its study of the Louisiana ports and their relationship to each other.

After review of all comments received and further analysis of the matter, Customs has determined that expansion of the Gramercy port limits is not necessary to maintain or expand the current service level at the port. The division among the commenters is more a political dispute among competing port commissions, that of New Orleans and South Louisiana. The concurrence of Customs and state determined port boundaries would affect state port workload statistics and the allocation of state grants. However, the expansion would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

For the above stated reasons, the proposal to expand the geographical limits of the Customs port of entry of Gramercy, Louisiana, is withdrawn.

Drafting Information

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

William von Raab,

Commissioner of Customs.

Approved: February 21, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-5613 Filed 3-7-85; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2792-3]

Stack Height Regulation; Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period extension.

SUMMARY: This notice extends the supplemental public comment period for proposed revision to EPA's stack height regulation, now scheduled to close on February 25, 1985. The supplemental public comment period will end on March 11, 1985.

DATE: Interested parties may submit supplemental information until March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, Office of Air Quality Planning and Standards, Control Program Development Division (MD-15), EPA, Research Triangle Park, North Carolina 27711, (919) 541-5540.

ADDRESSES: Room 2409, EPA, 401 M Street, SW., Washington, D.C. 20460.

Background material for this action is located in Docket A-83-49, West Tower Lobby Gallery, EPA, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for photocopying. All written comments should be submitted (in duplicate, if possible) to: Central Docket Section, Docket A-83-49, EPA, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated a regulation governing the extent to which tall stacks and other dispersion techniques may be considered in setting emission limitations for stationary sources. This regulation was challenged by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc. (NRDC), and the Commonwealth of Pennsylvania (*Sierra Club* v. *EPA*, 719 F.2d 436) and, on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit issued a decision reversing two portions of the regulation, remanding certain other portions to EPA for reconsideration, and imposing a deadline of January 18, 1985, for the promulgation of revised rules. Revisions to the regulation, responding to the court decision, were proposed on November 9, 1984 at 49 FR 44878. That notice describes the court decision and the proposed revisions in greater detail.

Subsequent to the proposal, EPA received a request for a public hearing and several requests for extension of the 30-day public comment period. EPA granted these requests, and the Court of Appeals modified its schedule accordingly.

Since granting these last requests, EPA has received additional requests for further extension of the supplemental comment period beyond February 25. EPA and petitioners Sierra Club and NRDC are filing a joint motion requesting the court to extend the deadlines, including the close of the supplemental comment until March 11 and promulgation on June 13. If the court denies this request, EPA will modify the comment period as necessary to meet any court-mandated deadline.

Accordingly, supplemental comments may be submitted in writing no later than 4:00 p.m. on March 11, 1985 to: Central Docket Section, Docket No. A-83-49, EPA, 401 M Street, Washington, D.C. 20460.

List of Subjects in 40 CFR Part 51

Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: March 4, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5576 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The notice of proposed rulemaking (NPRM) on obligation guarantees was published on August 18, 1983 (48 FR 37453-37464). Elsewhere in this issue, the Department of Transportation is publishing a final rule prescribing conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. [An "obligation guarantee"

is a pledge of the full faith and credit of the limited States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Merchant Marine Act, 1936.] This notice asks for comments on the following issues: procedures for the calculation of the internal rate of return, used to assist in determining the economic soundness of a project proposed for an obligation guarantee; and the anticipated economic impact of the proposed requirement. This notice also requests comment on proposed changes to confidential information disclosure and insurance reporting requirements pertaining to obligation guarantee applications. It is anticipated that a final decisions on this rulemaking will be made expeditiously.

DATE: Comments on this notice must be received on or before April 8, 1985.

ADDRESS: One original and one copy of the comments should be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. Any commentor who wishes an acknowledgment of receipt by MARAD should include a stamped, self-addressed post card or envelope. All comments will be made available for inspection during normal business hours in Room 7300, Department of Transportation, 400 Seventh St., SW., Washington, D.C. (Nassif Building).

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh St., SW., Washington, D.C. 20590, (202) 382-0389.

SUPPLEMENTARY INFORMATION:

Background

Section 298.14 of the existing rule on obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without finding that the proposed project will be economically sound. It also provides that economic soundness be determined by considering factors including, among other things: the vessel's potential for employment in the market over the life of the guarantee, projected revenues and expenses of operation, the length of the guarantee period and any charters or transportation agreements. An NPRM was issued on obligation guarantees on August 18, 1983 (48 FR 37453). In § 298.14 of the NPRM, MARAD proposed that certain "objective criteria" be added to the existing rule for the determination of economic soundness by MARAD.

To demonstrate economic soundness, MARAD proposed in the NPRM that the applicant submit a cash flow analysis statement including, among other things, an internal rate of return (IRR) analysis. Each project would have to meet certain objective criteria to be considered economically sound: the projected long-term demand for the vessels to be financed must exceed the supply of vessels with similar capacity in applicable markets; the project's projected cash flow must be sufficient to meet the projected Title XI debt service requirements; the present value of the projected cash flow must be positive, using a ten percent discount rate; and the IRR analysis must provide a minimum real rate of return of ten percent.

MARAD included the proposed requirement that applicants provide an IRR of at least ten percent to aid it in evaluating the relative merits of competing applications, and promote uniformity in the procedures followed and the format used by applicants seeking financial assistance under the Title XI program. An IRR analysis shows the relative projected profitability of a proposed project, and whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed, or established with the proceeds of the obligation will be economically and efficiently used.

Calculation of the IRR

Although comments were specifically invited on the merits of using an IRR analysis in evaluating Title XI applications, no specific comments were requested on procedures for calculation of the IRR. Moreover, the NPRM did not clearly indicate what procedures for IRR calculation were being proposed by MARAD nor the relative merits of any particular procedures.

MARAD believes applicants should have clear and precise procedures for complying with an IRR analysis requirement. It is convinced that specific, clear procedures would produce more accurate and complete information that will assist its selection of successful applicants.

In this NPRM, MARAD is proposing procedures for calculation that would be based on the total project cost. These procedures, involving calculation of the ten percent IRR based on the total project cost, follow procedures and application formats similar to those used by applicants for loan guarantees issued by the Federal Railroad Administration under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (49 U.S.C. 1651 *et seq.*) (Pub. L. 94-210).

When commenting on these procedures, commenters should also consider the following question: are there any other methods of calculating the ten percent IRR that would be preferable to the one discussed in this notice?

An IRR analysis requirement has been included in the final rule although the procedures for calculation are in this proposal. After reviewing the comments that are received on this NPRM, it is anticipated that a final decision on this rulemaking will be made quickly.

Amendments to Confidential Information Disclosure Provision

MARAD also proposes to revise paragraph (d)(2) and delete paragraph (d)(3) of § 298.3 which concern applicant claims of exemption from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). The proposed revision to paragraph (d)(2) would change the requirement that MARAD make a determination on an applicant's claims of exemption at the time the application is filed. MARAD has found this requirement to be administratively burdensome and to impede expeditious processing of applications. Claims for exemption instead would be reviewed and a determination made at the time a specific request for information is made pursuant to the FOIA by a third party. The present requirement that the applicant assert a claim of exemption from the disclosure provisions of FOIA at the time of filing will not be affected by the proposed revision.

The proposed deletion of paragraph (d)(3) would eliminate the requirement that this information be returned if the applicant receives an unfavorable exemption determination and desires to have it returned. MARAD has found it to be administratively burdensome to collect and return voluminous materials by mail to applicants. It assumes that applicants will have retained copies of such important material.

Insurance Reporting Requirements

This proposed provision (§ 298.42) would require a Title XI obligor to furnish statements from its insurance underwriter(s) or broker(s) confirming that the company is current on its payment of premiums and indicating the effective term of the insurance. Under current practice, MARAD may never be notified that a Title XI obligor has allowed an insurance policy to lapse. This means that the collateral securing the loan guarantee could be accidentally destroyed and the Secretary could not recover on the loss.

Regulatory Evaluation and Regulatory Flexibility Act Determination

The proposed rulemaking has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979 (DOT Order 2100.5). The proposal is not considered to be a major rule because it would not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies or regions or have a significant adverse effect on competition or any other aspects of the economy. MARAD believes that since many applicants presently perform IRR analyses of prospective projects in order to make their investment decisions, they will incur only minor administrative cost in complying with any final regulation. MARAD estimates the total annual administrative cost of compliance with these computation requirements to be $1,491 per applicant, per project. MARAD estimates the total annual administrative cost of preparing and submitting the semiannual insurance confirmation to be $1,500 per applicant per project.

However, MARAD did not have accurate information relating to the essential variables that would be needed to determine the economic impact on a company of these requirements or to conduct a cost-benefit analysis. Such variables might include the accounting methods used, and how a company treats non-marine assets. MARAD is, therefore, specifically requesting comments from the public on the likely economic impact if this proposed rule is adopted. At this time, despite the fact that MARAD lacks the information needed to determine the economic impact of any rule on this subject MARAD believes a full regulatory evaluation is unnecessary.

The proposal is considered to be significant under DOT Order 2100.5 because it concerns a matter on which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the existing Small Business Administration criteria for a small business under the classification of "transportation and warehousing" (13 CFR 121.3–3.10(f)), the Maritime Administrator certifies that this rulemaking would not, under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) exert a significant economic impact on a substantial number of small entities.

The proposed rulemaking contains information collection requirements in the following sections: § 298.14 and § 298.42. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*) Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, ATTN: Desk Officer, Maritime Administration. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Maritime Administration as indicated under "ADDRESSES."

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs, Transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts, Vessels.

PART 298—[AMENDED]

For the reasons set out in the preamble, Part 298, Subparts A, B, and E Chapter II of Title 46, Code of Federal Regulations are proposed to be amended as follows.

Section 298.14 is amended by adding a paragraph (b)(4) to read as follows:

§ 298.14 Economic soundness.

* * * * *

(b) * * *

(4) The project shall have at least a ten percent (in real terms) internal rate of return using the following computation procedures:

(i) A detailed narrative description of the project. This description must present the following: The objectives of the project, e.g., what vessels will be constructed, reconstructed, or reconditioned, and how they will be used. It must also describe any other work to be done as part of the project, and any operating changes, including retirement of assets, which will accompany the investment. For these purposes, the project shall be deemed to include all expenditures (including those for which no Federal assistance is requested) necessary to carry out its objectives.

(ii) A detailed narrative description of the base case. The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., make no change in the current situation. In other cases, the applicant may take other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on vessels or equipment belonging to others. The applicant shall consider such alternative proposals as different ship designs, modification of existing vessels versus new equipment, and analysis of leasing versus direct ownership. If the applicant has considered more than one alternative action (requiring little or no investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(iii) A narrative discussion of key assumptions. All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much revenue is expected if the project or base case are undertaken, and where the difference, if any, between the project and base case is expected to come from. Other key assumptions may relate to actions by third parties, such as regulatory agencies. The applicant shall conduct a sensitivity analysis that takes into account the applicant's historical market share, past market fluctuations, availability of long-term charters, potential government actions, especially in areas of intended foreign operations.

(iv) A narrative discussion of each cash flow impact resulting from the project or base case. The applicant must identify all the cash receipts and disbursements resulting from the project but not the base case, and vice-versa. Cash flows which would be the same in either event should not be considered. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant must identify and discuss important costs and benefits which it has not been able to quantify. The applicant must note which of the benefit and cost items could be measured to confirm the predictions in the IRR computation, and must suggest how such measurements could be made. (Appendix A of this subpart lists the most common cash flow impacts of investment projects and base case alternatives, indicates the kinds of actions likely to involve a type of cash

flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.)

(v) A discussion of the principal areas of uncertainty. This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. The applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(vi) For the project, (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I–V of Appendix B to this subpart shall be prepared and provided. State and local tax impacts need not be included in the computations, unless the applicant has determined that their inclusion substantially affects the IRR. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such cases is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case.)

(A) *Step 1:* the applicant must determine, for each year of the project's expected useful life, up to a maximum of 25 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the required cash were immediately available at no cost.

(*a*) The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V, cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and, thus, the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(*b*) Capitalized investments which would occur as a part of the project but not in the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other startup costs allowable in reporting to the IRS. The total investment for the project must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carry forward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments). A separate form should be completed for each such portion. Similarly, a set of Forms I must be completed for a capitalized investment which would be made as part of the base case but not the project.

(*c*) Sales of released assets (as useful assets or as scrap), which would occur as a part of the project or the base case, must be entered in Column 1 of Form II. As was the case for the capitalized investments, there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue an asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue the asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternative use, whether in the project or base case, should be entered on Form III rather than treated as a theoretical sale at a fair market value).

(B) *Step 2:* the applicant must compute the annual cash flows after Federal income tax corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credit from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. The average or effective tax rate (found by dividing firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pretax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(*a*) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in

reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow-through method, in which investment credits are generally treated as reductions in income tax expense of the year in which the credits are actually realized, rather than being deferred and amortized over the productive life of the acquired property.) Column 5 is the net after-tax cash flow associated with the investment.

(*b*) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding writedown of book value, Form II is not used, but Form I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. Finally, Column 4 records the net cash flow in or out.

(C) *Step 3:* The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(*a*) For each year, the corresponding after-tax cash flow (Column 5 on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I are summed and entered into Column 2 of Form IV.

(*b*) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into Columns 3 and 4, respectively, of Form IV.

(D) *Step 4:* The applicant shall enter the operating income for the project and the base in Form III for each year of the project's life and shall determine and enter the after-tax cash flow. If the applicant expects to pay no Federal income tax, columns three and four will be identical. If the applicant expects to pay taxes in some years but not other, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow. The aggregate net cash flow for the project relative to the base case is then found and entered on Form IV.

(E) *Step 5:* The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV. All estimates shall be in constant dollars.

(F) *Step 6:* The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. The applicant should furnish:

(*a*) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations, and

(*b*) A reconciliation between the cash flows used in the IRR computations and all forecasted data presented in the application, both before (for the base case) and after (for the project). This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

In § 298.3, paragraph (d)(3) is removed and (d)(2) is revised to read as follows:

§ 298.3 Application.

* * * * *

(d) * * *

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

Section 298.42 is amended by adding paragraph (c) to read as follows:

§ 298.42 Reporting requirements—financial statements.

* * * * *

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which confirmation shall state the term for which the insurance is in force.

Appendices A and B are added to Subpart B of the 46 CFR Part 298 to read a follows:

Appendix A to Subpart B—Selected Cash Flow Impacts

Investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.
Labor requirements.
Requirements for trailers, and containers.
Energy consumption.
Expenditures needed to meet legal requirements.
Salvage value.

While this list is not exhaustive it does identify the most common cash flow impacts.

Some of the items listed are almost always costs of projects or base cases, rather than benefits. Others, such as salvage items, however, may be either project or base case benefits or costs, depending on the particular situation.

Use of Assets

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets.

Monetary Value: The value of an asset released by an action depends on what will be done with it. Depending on the particular circumstances, any of the following might be involved: Payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditure for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased.

In cases in which the assest is transferred to another use which provides income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Labor Requirements

Characteristic Actions: Labor requirements are often reduced by automation or facility consolidation.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime hours, the wages and fringe benefits associated with that change directly affect the cash flow.

Requirements for Trailers, and Containers

Characteristic Actions: Actions which change turnaround time.

Energy Consumption

Characteristic Actions: Actions changing efficiency.

Monetary Value: Found by multiplying the fuel by the current price per unit.

Salvage Value.

Characteristic Actions: Acquisition of new assets or disposal of existing assets.

Physical Units: List of the particular assets involved.

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

Expenditures Needed to Meet Legal Requirements

Characteristic Actions: Actions permitting abandonment of old vessels or equipment may reduce the need for such expenditures. New vessels may make some such expenditures unnecessary.

Appendix B to Subpart B—Forms To Be Used in Computing IRR

Form 1—Analysis of Capitalized Investment (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____
Portion of investment covered by this sheet _____
Depreciation method used _____
Depreciation Period _____
This investment would occur in the ☐ Project ☐ Base case (check one)

Year	(1)—Amount capitalized	(2)—Depreciation	(3)—Tax reduction from depreciation	(4)—Tax reduction from investment tax credit	(5)—Net cash flow in (out)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

INSTRUCTIONS

Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.

Estimate amounts in cols. 1-4 as would be done in reporting to IRS.

Col. 5 equals in col. 3 plus col. 4 minus col. 1.

Form II—Analysis of Sale or Retirement of Assets (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____
Assets covered by this sheet _____
Depreciation method used _____
Depreciation Period _____

Book value of assets at time of sale _____
This sale would occur in the ☐ Project ☐ Base case (check one)

Year	(1)—Sale price	(2—Tax on gain (for tax saving on loss) from disposal	(3)—Tax credit recapture	(4)—Net cash flow in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

INSTRUCTIONS

Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.

Estimate amounts in cols. 1-3 as would be done in reporting to IRS.

Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Form III—Analysis of Operating Income

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____

Year	(1)—Operating revenues	(2)—Operating expenses	(3)—Pretax net operating income	(4)—After-tax operating income
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Form IV—Consolidation of Cash Flows (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____

Year	Form I—Totals		Form II—Totals		Form III—Totals		(7)—Net cash flow in (out)
	(1)—Project	(2)—Base case	(3)—Project	(4)—Base case	(5)—Project	(6)—Base case	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							

Year	Form I—Totals		Form II—Totals		Form III—Totals		(7) —Net cash flow in (out)
	(1)—Project	(2)—Base case	(3)—Project	(4)—Base case	(5)—Project	(6)—Base case	
15							
Totals							

INSTRUCTIONS
Cols. 1 through 5 are found by summing the right most columns on the indicated forms.

Form V—Computation of IRR (Constant Dollars)

Project _____ Sheet No._____ of _____

Applicant _____

Date _____

Year	(1)—Cash flow	Present value					
		Factor	(2)—Value at 10 pct	Factor	(3)—Value at 25 pct	Factor	(4)—Value at 40 pct
1		0.909		0.800		0.714	
2		.826		.640		.510	
3		.751		.512		.364	
4		.633		.410		.260	
5		.621		.328		.186	
6		.564		.262		.133	
7		.513		.210		.095	
8		.467		.168		.068	
9		.424		.134		.048	
10		.386		.107		.035	
11		.350		.086		.025	
12		.319		.069		.018	
13		.290		.055		.013	
14		.263		.044		.009	
15		.239		.035		.006	
Total							

PRESENT VALUE OF CASH FLOW STREAM

IRR = _____

INSTRUCTIONS
1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.

(Sec. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97.31, August 6, 1981, 49 CFR 1.66)

Dated: January 31, 1985.

Murray A. Bloom,

Acting Secretary—Maritime Administration.

[FR Doc. 85-5508 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1145, Phase I, FCC 85-69]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Order requesting comments.

SUMMARY: This Order addresses the issues raised in the petitions for reconsideration of the *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 9174, Mar. 12, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 13075, Apr. 2, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 19821, May 10, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 23924, June 8, 1984. In response to petitions that objected to the exchange carriers' proposals to route all undesignated interexchange traffic to the American Telephone and Telegraph Company, the Commission invites comments on whether it is reasonable to route all "default" traffic to one particular interexchange carrier. Commenters supporting this "default" traffic method are requested to come forward with justification for this practice and explain why alternative plans are unworkable or unreasonable. Those parties supporting alternative plans such as *pro rata* allocation should explain how such plans would work, and should address questions relating to the implementation of suggested alternative plans. They should show, for example, how undesignated traffic would be handled, and whether it would be necessary to use balloting procedures to obtain initial presubscription results.

DATES: Comments are due April 4, 1985, and Reply Comments on or before April 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joanne M. Salvatore, Tariff Division, Common Carrier Bureau (202) 632-6917.

Memorandum Opinion and Order on Reconsideration

In the matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83-1145, Phase I.

Adopted: February 14, 1985.

Released: February 25, 1985.

By the Commission: Commissioner Patrick issuing a separate statement.

I. Introduction and Background

1. In October 1983 we received over 200,000 pages of tariffs and associated support material filed in response to the divestiture of the American Telephone and Telegraph Company (AT&T) and the implementation of our access charge decisions. This proceeding was instituted at that time to facilitate review of these tariffs. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 83-470

(released October 19, 1983). Four months later, after a thorough review of comments received from dozens of parties, we found the access service tariff filed by the National Exchange Carrier Association to be unlawful. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–51 (released February 17, 1984) (*ECA Tariff Order*). Shortly thereafter, the Chief, Common Carrier Bureau, issued a similar order covering the initial access service tariffs of 74 other local exchange carriers. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, Mimeo No. 2802 (released March 7, 1984) (*Non-ECA Tariff Order*). Both tariff orders contained lengthy appendices of approximately four hundred pages, each setting forth a section-by-section analysis of the tariffs, and providing carriers with detailed instructions for revising and refiling their access tariffs.

2. As directed by the *ECA Tariff Order* and *Non-ECA Tariff Order*, the exchange carriers refiled their access service tariffs in March 1984, with a scheduled effective date of April 3, 1984.[1] An initial examination of the refiled tariffs revealed that substantial questions of lawfulness remained unresolved. Accordingly, we deferred the effective date of the refiled tariffs from April 3 until June 13, 1984, and established an extended schedule for public comment on the tariffs. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–106 (released March 15, 1984) (*Extension Order*). We found, moreover, that the the Special Access portions of the tariffs presented particularly difficult questions of reasonableness. Therefore, the *Extension Order* established a separate pleading cycle for Special Access related matters.[2]

3. Our investigation of the non-Special Access portions of the tariffs confirmed that, despite considerable improvement, the tariffs were still unlawful. Accordingly, a third tariff order was issued. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–188 (released April 27, 1984) (*April 27th Order*). As in the earlier tariff orders, the *April 27th Order* set forth a section-by-section analysis of the regulations contained in the ECA and Non-ECA tariffs. We again included detailed instructions for refiling the tariffs, but did not address questions relating to rates. Instead, we resolved cost-related questions in yet another separate order. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–201 (released May 15, 1984) (*Cost Order*). Finally, by revising their tariffs in substantial compliance with these orders, exchange carriers were able to begin offering all access services (other than Special Access) on May 25, 1984.

4. During the course of this investigation, we have received a number of petitions for reconsideration of various aspects of the *ECA Tariff Order*, the *Non-ECA Tariff Order*, the *April 27th Order* and the *Cost Order* ("tariff orders").[3] These petitions were filed by both exchange carriers and their access service customers (principally, interexchange carriers or "ICs"). The petitioners express overall satisfaction with our handling of the access tariffs during this long and complex proceeding. Nevertheless, the petitioners seek reconsideration of a number of particular decisions in those orders. For example, the exchange carriers submitting petitions for reconsideration (Bell Atlantic, CENTEL, Pacific Bell and Nevada Bell, and NYNEX) generally assert that we should reconsider portions of the tariff orders that found certain provisions unreasonable.[4] On the other hand, access customers such as Allnet, ALTEL, SBS, and USTEL assert that we did not go far enough in requiring deletion or modification of certain other tariff provisions.

II. Discussion of Issues

5. In the *ECA Tariff Order*, the *Non-ECA Tariff Order* and the *April 27th Order*, we adopted a "modular" format for review of the access service tariff filings. After a general overview of the tariffs and a brief textual discussion of certain issues, each tariff order analyzed particular access service provisions within individual "modules." These modules were grouped by tariff section (*e.g.*, general regulations, ordering provisions, switched access service) and set forth in appendices to the tariff orders. Essentially, this format allowed a section-by-section review of the tariffs that followed the structure of the tariffs themselves. Although the present order is concerned with petitions for reconsideration of the tariff orders, and not the tariffs themselves, we will again use a "modular" format to analyze issues raised by the petitioners. These modules are set forth in Appendix B.

6. In general, we have affirmed our earlier orders in this proceeding. The actual experience gained in the past months by carriers, customers and this Commission has shown that the access tariffs, as revised, are indeed a workable means of implementing our access charge rules. In some cases, however, we are persuaded that certain revisions may be made to the findings of the tariff orders. For example, one area that was of particular concern to us when we reviewed the October 1983 tariff filings related to the carriers' proposed access ordering procedures. In particular, we were concerned that the "Planned Facilities Order" (PFO) ordering mechanisms would have unduly shifted the burden of network planning to customers. Under the PFO provisions, customers ordering access facilities not in inventory would have been required to place orders from 24 to 36 months in advance, with 12 month service charge pre-payment and 24 month minimum service periods. There was no clear distinction, however, between facilities that would be in "available inventory" and those that would require special planned orders. We were concerned that small customers needing only a few circuits could potentially be required to order all facilities under the PFO process, while large customers who ordered hundreds of circuits, perhaps depleting "available inventory," would obtain the same types of facilities under normal ordering conditions. Moreover, the PFO provisions were one-sided. While customers using PFOs would be subject to substantial advance payment and minimum service periods, the provisions

[1] Pursuant to a waiver granted by the Chief, Common Carrier Bureau, the Matanuska, Orchard Farm, Walnut Hill, Citizens and Fidelity and Bourbeuse Telephone Companies, and Anchorage Telephone Utility filed revisions to their access service tariffs after the March 19, 1984 filing deadline established for non-NECA carriers. Those tariffs, as revised, were allowed to become effective on October 16, 1984. *Anchorage Telephone Utility*, CC Docket No. 83–1145, Phase I, Mimeo No. 0294 (released Oct. 16, 1984).

[2] The carriers' March 1984 Special Access filings were recently found to be unlawful. Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part I, FCC 84–524 (released Nov. 9, 1984) (*Special Access Order*).

[3] A list of parties filing petitions for reconsideration, along with various commenters and reply commenters, is attached as Appendix A.

[4] In some cases, exchange carriers sought interim relief from various aspects of the tariff orders by submitting petitions for waiver. The majority of these petitions were addressed in three waiver orders issued in this proceeding by the Chief, Common Carrier Bureau. *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 2964 (released Mar. 10, 1984) (*First Waiver Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 4250 (released May 16, 1984) (*Second Waiver Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 4246 (released May 16, 1984) (*Third Waiver Order*). Similar petitions for waiver that were not included in this scope of these waiver orders were resolved on an informal basis.

did not set any incentives for exchange carriers to actually meet the promised service dates. For these reasons we instructed carriers to delete provisions relating to Planned Facilities Orders.

7. As discussed below in Appendix B, we have determined that it may be possible for carriers to implement a planned facilities ordering mechanism in their access tariffs. It appears that both exchange carriers and access customers would benefit from a truly optional ordering mechanism for handling extraordinary service requests. Moreover, at least one access customer, MCI, expresses a willingness to commit to extraordinary minimum service periods and advance payment obligations in return for guaranteed delivery of facilities. We continue to be concerned that all access customers, including smaller interexchange carriers, should be able to obtain service under normal ordering conditions upon reasonable request. Nevertheless, we have reconsidered our decision in the *ECA Tariff Order* with respect to planned facilities orders, thus allowing carriers to propose reasonable, non-discriminatory PFO provisions in their March 1985 access service tariff filings.[5]

8. Exchange carriers also sought reconsideration of several decisions in the *ECA Tariff Order* and *April 27th Order* that dealt with the level and structure of various nonrecurring charges for access service. For example, in the absence of adequate cost support information, we limited carriers to a nonrecurring charge of five dollars for end users seeking to change their predesignated (presubscribed) interexchange carrier. *April 27th Order*, App. B at 13–5. We also required carriers to delete a proposed "Other Modification Charge" for access order modifications, *ECA Tariff Order*, App. D at 5–19, and we further required carriers to restructure nonrecurring charges relating to installation of Switched Access Service. *Id.* at paras. 51–59. As originally filed, the tariffs set forth a charge for access service installation that was based on the capacity of the access service ordered. The levels for the proposed charge varied enormously among exchange carriers' tariffs, and we found that there was little correlation between the carriers' cost support material and the levels of the proposed charges. Moreover, we found that, as a structural matter, the carriers had failed to justify their proposed system of capacity-based installation charges. For example, while some of the costs of installing access service could be expected to vary with capacity ordered, other costs would not vary on this basis. In the absence of sufficient cost justification to support the proposed rates and rate structure, we required access carriers to delete the capacity-based charging system and replace it with a flat charge set at a level that would be no higher than the average charge for installation found in the OCC Facility Tariffs, which had governed similar installations prior to implementation of the access tariffs.[6]

9. The exchange carriers addressing this issue in petitions for reconsideration argue that they should be allowed to refile capacity-based nonrecurring charges for installation and other service activities. According to Pacific Bell and Nevada Bell, the capacity-based structure was intended to act as an equitable means of assessing installation charges to access customers, since customers would be charged the same for added capacity regardless of their size. At the same time, these petitioners argue that we should reconsider our decision to limit the level of installation charges to those found in the OCC Facility Tariffs. This limitation, in their view, results in charges that are "grossly inadequate" to cover the costs of installing service.

10. As discussed below, we agree that nonrecurring charges for installation should recover the costs of performing the various activities associated with installation. For that reason, we will allow carriers to file fully supported, nondiscriminatory charges for installation. We find however, that the petitions fail to provide convincing evidence that the exchange carriers' original proposals for capacity-based charges should be reinstated. As we noted in the ECA Tariff Order, it is unlikely that all of the up-front administrative costs of beginning service are related in any direct way to the capacity ordered. *Id.* at para. 57. The petitions do not attempt to segregate these costs in any way, nor do they attempt to show why the original system could be considered more equitable that a flat charge. Accordingly, these petitions will be denied in this respect. To the extent that carriers can show that some of the costs associated with installation and other one-time service activities vary as a function of capacity, they may submit tariff revisions incorporating reasonable, fully supported capacity-based charges for those segregated costs in the context of their March 1985 access tariff filings or by other tariff revisions.[7]

11. Although we have attempted to address as many tariff-related issues raised by the petitions for reconsideration as possible, in a number of cases we have found it necessary to defer certain questions until later phases of this proceeding. For example, this order does not address claims raised with respect to the Special Access portions of the *ECA Tariff Order*. As noted above, issues related to Special Access were separated from other areas of investigation by the *Extension Order*. Since that time, participants in this proceeding were given extensive opportunity to submit additional comments, and as a result, the Special Access tariffs have been thoroughly revised, and it appears that the Special Access related concerns raised by these petitions have been adequately addressed.[8] To the extent that parties have raised questions or claims in their petitions for reconsideration of the Special Access portions of the *ECA Tariff Order* that remain unaddressed either in the *Special Access Order* or by revisions to the tariffs, we are not foreclosing resolution of these issues in the Special Access phase of this investigation.

12. In some cases, we have found that the petitions for reconsideration raise questions that cannot be fully addressed on the basis of the record gathered to date in CC Docket No. 83–1145. For example, the *ECA Tariff Order* found that the cost support material submitted with the October 1983 tariffs failed to justify the exchange carriers' proposed charges for interstate directory assistance. In the interest of achieving workable tariffs, we prescribed an interim one-year charge no higher than 25 cents for the directory assistance service call element. *ECA Tariff Order* at para. 84. A number of the petitions for reconsideration received from exchange carriers argue that this prescription fails

[5] Some exchange carriers (Illinois Bell Telephone Company, Ohio Bell Telephone Company, Michigan Bell Telephone Company and Wisconsin Bell Telephone Company) have recently filed revised PFO provisions for their access service tariffs. These tariff revisions became effective on February 8, 1985.

[6] *See, e.g.*, Cincinnati Bell Inc. Tariff F.C.C. No. 34 (Facilities for Other Common Carriers, *cancelled* Jan. 1, 1984).

[7] With respect to nonrecurring charges for presubscription changes, the Common Carrier Bureau recently instituted an investigation of revised presubscription charges filed by Central Telephone Company of Nevada. *See* Central Telephone Company of Nevada, Transmittal No. 9, Mimeo No. 1374 (released Dec. 13, 1984).

[8] For example, Western Union's petition for reconsideration of the *ECA Tariff Order* raises a number of issues that relate to our decision on Special Access rate structures. In the Special Access phase of this proceeding, however, we determined that many of Western Union's structural concerns were resolved. *Special Access Order* at para. 14.

to allow them to recover the costs of providing this service, and request that we allow higher charges to go into effect. The petitions fail to provide any additional cost support for higher directory assistance charges, and we are therefore unwilling to grant them. Recently, however, the Chief, Common Carrier Bureau, directed NECA and all Bell Operating Companies filing access service tariffs to supply updated cost support information on the costs of providing interstate directory assistance. Letter of December 12, 1984 from Chief, Common Carrier Bureau, to G.R. Evans, National Exchange Carrier Association. After review of the information filed in response to this letter, we expect to be in a better position to resolve the quesions raised by petitioners.[9]

13. Petitions for reconsideration of the *Cost Order* raise a closely related question. In that order, we indicated that we would allow AT&T to impose a 50 cent charge for interstate directory assistance calls. Based on the exchange carriers' initial proposals for directory assistance service charges (which averaged much higher than 25 cents), AT&T had originally proposed a charge of 75 cents for each interstate directory assistance call placed over its network, with one free call allowed to each subscriber per month provided the subscriber made at least one MTS call in that month. As a result of our prescription in the *ECA Tariff Order*, however, AT&T indicated that a 50 cent charge would cover its costs. We agreed that a charge no higher than 50 cents could be allowed to go into effect, provided that AT&T allowed two free calls per month to customers making at least two MTS or WATS calls. *Cost Order* at para. 92. The petitions for reconsideration of the *Cost Order* generally argue that AT&T's charge should be eliminated. Some parties quarrel with AT&T's administration of the charge, arguing that AT&T should be required to give two free calls per subscriber line, not account; that AT&T should also be required to "carry forward" unused complimentary calls from month to month; and that AT&T should be required to provide free interstate directory assistance calling from pay phones.

14. In our view, these petitions fail to present any new information or claims that would cause us to reconsider our decision to allow AT&T to impose directory assistance charges. Clearly, the use of AT&T facilities to access interstate directory assistance service involves some cost to AT&T. As we noted in the *Cost Order*, unbundling directory assistance charges from overall MTS rates should result in fairer recovery of those costs, and customers will thereby be given an appropriate price incentive to make efficient use of the service. We point out that the *Cost Order* did not prescribe the interstate directory assistance charge, but merely allowed AT&T's tariff establishing that charge to become effective. The charge remains subject to challenge in an appropriate complaint proceeding.

15. Nor do we believe that we should require changes in the way that AT&T administers the charge. For example, the Federal Executive Agencies (FEA) has argued that, because it obtains many thousand individual lines from local exchange carriers under one account name, it should be provided with at least two free calls per line, instead of only two free calls for all lines obtained under the same name. The number of local exchange service lines obtained by a given customer, however, is entirely irrelevant to the purpose of the free call allowance, which was to relieve individual residential customers and small businesses of undue hardship that in the transition to interstate directory assistance charges. As the *Cost Order* pointed out, large users such as credit bureaus and other businesses should be fairly assessed for their interstate directory assistance calling. A charge along the lines suggested by FEA might result in thousands of "free" directory assistance calls originated by large users, which, in turn, would likely require an increase in the overall rate for directory asssistance calls or in charges for MTS. Other proposals to extend the benefit of the complimentary call allowance also will therefore be denied. We emphasize once again that the interstate directory assistance charge, including the two free call feature, was not prescribed and remains subject to any appropriate complaint.

16. The *ECA Tariff Order* questioned the propriety of including Billing and Collection Service in the tariffs. Although our rules indeed require exchange carriers to include a billing and collection element in their tariffs if this service is provided to one interexchange carrier, our examination of the tariffs themselves revealed that many elements of billing and collection did not appear to be properly within the definition of "access service." *See ECA Tariff Order*, App. D at 8–2, *quoting* § 69.2(a) of the Commission's Rules, 47 CFR 69.2(a). Accordingly, we determined that a separate proceeding should be instituted to examine the question of whether billing and collection services could be detariffed. The petitions for reconsideration of the *April 27th Order* raise one important question related to billing and collection service: that is, whether it is reasonable to allow exchange carriers to deny local service to end users who fail to pay interexchange carrier service charges. As discussed in Appendix B of this order, we have determined that ultimate resolution of this question is best left to our separate proceeding on billing and collection. In the interim, carriers who have obtained waiver of the requirements of the *April 27th Order* in this regard may continue to deny end users local service where such denial is permitted by state regulatory authority.

17. Under current tariff arrangements, end users in areas converted to Feature Group D access may "presubscribe" to a particular interexchange carrier (IC). Presubscription allows end users to access the facilities of their designated IC without dialing the five-digit access code normally associated with the IC. In most cases, exchange carrier tariffs provide that end users with established service at the time that Feature Group D access is made available in a given area will be automatically presubscribed to AT&T. These end users then have six months in which to change their designated carrier without charge. End users who do not change this initial designation will continue to have their interexchange traffic routed to AT&T.

18. A number of parties in this proceeding objected to the exchange carriers' proposals to route all undesignated traffic to AT&T. The *ECA Tariff Order* recognized that AT&T's status as "default" carrier for undesignated traffic would work to AT&T's advantage, but denied petitions to reject the tariffs on this ground. At the time, it appeared that alternative solutions such as call blocking or *pro rata* distribution of undesignated traffic among competing ICs would involve undue inconvenience to end users. SBS and USTEL have petitioned for reconsideration of the *ECA Tariff Order* in this matter. These ICs assert that it is anticompetitive to allow AT&T to act as the "default" carrier for undesignated traffic, and that alternative schemes such as a *pro rata* allocation would, in fact, be workable.

19. In reply to these petitions, AT&T argues that the *ECA Tariff Order's* original disposition of this matter should

[9] The Common Carrier Bureau recently rejected a NECA request to increase its interstate directory assistance charge to 28 cents because NECA did not justify its claimed costs and did not address the substantive issues raised in the *ECA Tariff Order*. *See* National Exchange Carrier Association, Transmittal No. 23, Mimeo No. 1990 (released Jan. 17, 1985) at para. 8.

be reaffirmed. AT&T points out, for example, that the District Court reviewing the Modification of Final Judgment (MFJ) divestiture agreement resolved the issue of AT&T's default carrier status by determining that the BOCs would be permitted to route undesignated calls to AT&T to avoid confusion and inconvenience to the customer. In support of AT&T's comments, several BOCs argue that the proposed alternatives to the assignment of AT&T as default carrier are inconvenient, expensive and confusing to the public. The NYNEX companies assert that any advantage AT&T may enjoy as default carrier will be short-lived because new customers are required to presubscribe and BOCs must publicize the fact that current customer's may predesignate any IC.

20. Since the time that the *ECA Tariff Order* was issued, it has come to our attention that one exchange carrier, Northwestern Bell Telephone Company, has implemented a *pro rata* distribution plan for assigning ICs to customers who fail to designate a particular carrier. Under its *pro rata* allocation plan, Northwestern Bell apparently uses initial presubscription figures (obtained by ballot) to assign "default" subscribers among competing interexchange carriers on a proportional basis. For example, if 50 percent of the subscriber lines in a given equal access area are presubscribed to a particular IC, 50 percent of the undesignated subscriber lines will be assigned to that IC as well. Subscribers who are assigned in this fashion are then notified by Northwestern Bell of the selection, and are given an additional 30 days in which to select some other carrier. No charge applies to the subscriber for this second opportunity to presubscribe.

21. Certain limitations are placed upon ICs who wish to participate in the allocation process. For example, Northwestern Bell requires all ICs to have the capability of terminating an originating Feature Group D call to any point in the Continental United States. ICs must agree to accept all assigned customers and not to impose upon them any fixed monthly charges without their consent. Moreover, the service provided to assigned customers must be at least equal to that provided the IC's other presubscribed customers. Finally, the IC's rates may not exceed the highest rates specified in any IC's effective interstate and intrastate tariffs for MTS or MTS-type service. According to Northwestern Bell, this limitation is necessary to ensure that ICs not subject to tariff regulation are not able to collect exorbitant rates from assigned customers.

22. Although we make no determination as to the reasonableness of the plan developed by Northwestern Bell, it appears to us that our original conclusions on this question bear reexamination. In our view, the practice of routing all "default" traffic to AT&T can only be justified by a strong showing of necessity. If, in fact, *pro rata* plans for distributing default traffic can be implemented without undue customer inconvenience, then the basis for the *ECA Tariff Order's* determination in this matter is seriously undermined. It may be the case that customers in equal access areas would only experience a minimal level of inconvenience under plans similar to Northwestern Bell's, and it may also be true that the benefits of an alternative system would more than compensate for this inconvenience. For example, under an alternate system, AT&T, like its competitors, would have an incentive to offer new and competitive services as a means of affirmatively attracting presubscriptions. Increased consumer awareness of the available range of choices, as well as presumably lower prices and new services, would be likely to follow. Under the current system, however, AT&T may be seen as having an incentive to persuade customers to take no action with respect to presubscription, since all such default traffic flows to AT&T. We believe that a system that encourages consumers to exercise their right to select from among competing long distance carriers is, in the long run, beneficial.

23. The present record is insufficient for us to make any final determination on this matter. We are seriously concerned, however, that it may be an unreasonable practice under section 201(b) or the Communications Act, 47 U.S.C. 201(b), and unreasonably discriminatory under Section 202(a) of the Act, 47 U.S.C. 202(a), for carriers to route all "default" traffic to one particular interexchange carrier. In order to make a final determination of this matter, we request that interested parties in this proceeding submit comments on the question of whether it is reasonable to route all undesignated traffic to one particular interexchange carrier. Those parties who assert that routing all default traffic to one IC is a reasonable alternative should come forward with justification for this practice. These parties should explain why other plans such as *pro rata* allocation are unworkable or otherwise unreasonable. Parties who believe that alternative plans would be more reasonable than the practice of automatically routing all default traffic to AT&T should explain how such plans could work, and should address questions relating to the implementation of suggested alternative plans, showing, for example, how undesignated traffic should be handled, whether it would be necessary to use balloting procedures to obtain initial presubscription results, etc. Commenters should explain carefully how proposed plans would affect end users, and should suggest ways in which unnecessary inconvenience to subscribers can be avoided. Comments are due April 14, 1985. Replies are due April 15, 1985.

24. Petitioners have raised a number of other issues that do not appear to be within the scope of this proceeding. CC Docket No. 83–1145 is an investigation of the lawfulness of the filed access tariffs and their compliance with our access charge rules. Proposals to change or reconsider those rules should be submitted in the *MTS and WATS Market Structure Inquiry*, CC Docket No. 78–72. We note, however, that in most cases the issues raised in these petitions have already been discussed and resolved there. For example, questions related to the treatment of WATS closed ends for purposes of assessing carrier common line and end user charges have been extensively discussed in CC Docket No. 78–72, Phase I. Similarly, we have not addressed questions related to whether separate premium charges should be devised for the line termination element of Switched Access charges for Feature Group A access (as opposed to Feature Groups B, C or D); notice periods for conversion to equal access; what constitutes "equal access;" or whether multiline business end user charges should only be assessed on businesses with more than six lines (as opposed to more than one line). These issues all appear to be within the scope of CC Docket No. 78–72. We have also not specifically addressed questions with respect to whether premium and non-premium charges in LATAs partially converted to equal access should be assessed on an end office by end office basis. Since the time that the *ECA Tariff Order* and *April 27th Order* were issued, exchange carriers have extensively revised their tariffs to incorporate a formula to apportion charges between premium and non-premium traffic. *See, e.g.*, National Exchange Carrier Association Transmittal Nos. 21 and 28, Mimeo No. 1244 (released December 7, 1984). While we made no findings here as to the reasonableness of those formulas, it

does appear that the original concerns of petitioners have been rendered moot.

25. In its petition for reconsideration of the *Cost Order*, Allnet challenges the basis for our prescription of Switched Access rates. Allnet's principal objection to the *Cost Order* appear to relate to our use of BOC-supplied 1982 post-divestiture views to develop the ultimate levels for the prescribed rates, even though we had found that the BOCs had not fully supported those views. *Cost Order* at para. 60. Allnet argues that our use of unsupported 1982 figures as baseline figures in our rate calculations necessarily means that the resulting prescribed rates are unsupported. In Allnet's view, the effective date of the access tariffs should have been suspended or deferred, and the Commission should have adopted "more reasonable rate levels based on the detailed cost analyses of the commenting parties" in CC Docket No. 83–1145. Allnet Petition for Reconsideration at 6–7.

26. We find Allnet's petition in this regard to be without merit. We specifically found in the *Cost Order* that the 1982 post-divestiture views supplied by the BOCs, though flawed, were the best available information reflecting actual figures. *Cost Order* at para. 60. While continued deferral of the access tariffs would arguably have allowed us to collect more information, it appeared that the unique circumstances surrounding divestiture would probably continue to make estimation of most divestiture costs inherently uncertain. In other words, requiring additional estimates would not necessarily have produced better estimates. Faced with this continued uncertainly and in view of the need to implement some form of reasonable access tariffs eventually, we found that the 1982 post-divestiture views, with considerable adjustment and recalculation, could be used as the basis for finding just and reasonable rates. As the exchange carriers gain actual experience in the post-divestiture environment, we expect that the underlying cost data submitted with future tariff filings will be considerably more accurate than the estimates used in developing the 1982 post-divestiture views.

27. Allnet also raises the issue of whether exchange carriers should be required to include time-of-day sensitive pricing in their access tariffs. Allnet specifically recommends that, as an interim approach, the Commission should prescribe a time-of-day sensitive discount schedule for Carrier Common Line and Switched Access Service charges identical to the discount schedule currently used by AT&T for interstate MTS. Although we favor reasonable time-of-day sensitive rates where practical, the question of whether time-of-day sensitive rate structures should be prescribed for exchange carrier access tariffs is properly within the scope of CC Docket No. 78–72. In fact, in the *Third Report and Order* in that proceeding, we specifically noted that implementation of such peak/off-peak pricing structures would require extensive further study. *MTS and WATS Market Structure*, 93 FCC 2d 241, 307 (1983). Therefore, we will not now prescribe any particular peak/off-peak pricing structure for use in access tariffs.

III. Ordering Clauses

28. Accordingly, it is ordered that the petitions for reconsideration filed in this proceeding by the parties listed in Appendix A are granted or deferred to the extent discussed herein and are in all other respects denied.

29. It is further ordered that interested parties shall submit comments on the question of whether it is reasonable to route all undesignated traffic originating from end offices converted to Feature Group D access to one interexchange carrier, or whether alternative systems would be more reasonable. Comments are due by April 14, 1985, and replies by April 15, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Appendix A, Petitioners and Parties, and Appendix B, Section-by-Section Review of Petitions for Reconsideration, will not be printed herein due to the ongoing effort to minimize publishing costs. However, copies of this document, including those appendices, may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554 Tel. No.: (202) 296–7322. Also, a copy will be available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., NW., Washington, D.C.

Separate Statement of Commissioner Dennis R. Patrick

In re: Investigation of Access and Divestiture Related Tariffs, Phase I

I support the Commission's decision today to reexamine the practice followed by the majority of Bell Operating Companies (BOCs) of assigning to AT&T the traffic of all customers served by an end office converting to FG D who have not chosen to presubscribe to any interexchange carrier's service. Reports of unexpectedly high percentages of such "default traffic," [1] as well as the experience of Northwestern Bell with its approach of distributing default traffic on a *pro rata* basis, suggest we must give serious consideration to a method of assignment that would be more pro-competitive than the current method of assigning all default traffic to AT&T. I am concerned, however, that if we find it necessary to prescribe such alternative methods, we approve methods of handling default traffic that will maximize the likelihood of *customers'* exercising their presubscription rights and require minimal regulatory intrusion.

For this reason, I would hope that comments discussing alternatives to the currently prevalent method of assigning default traffic will not be restricted to analyzing the costs and benefits of a pro rata distribution approach. I shall be looking for discussions of the costs and benefits of other alternatives, *e.g.* blocking, that might involve less intrusive regulatory responses.

[FR Doc. 85–5515 Filed 3–7–85; 8:45 am]

BILLING CODE 8712–01–M

[1] See *Telecommunications Reports*, February 11, 1985, at 10.

Notices

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Meeting; Temple, TX; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Meeting; correction.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Temple, Texas, inadvertently published in the **Federal Register** of February 7, 1985, (50 FR 5284) an incorrect date of a public information meeting to discuss its draft Natural Resource Management Guide. The corrected date of the meeting is March 26, 1985. The previous date was February 7, 1985. Comments must be received no later than April 25, 1985, rather than March 9, 1985.

Dated: March 5, 1985.

Gary Morgan,

Acting Director, Program Support Staff.

[FR Doc. 85-5635 Filed 3-7-85; 8:45 am]

BILLING CODE 3410-07-M

Federal Crop Insurance Corporation

[Doc. No. 1882S]

Claim for Indemnity; Interest Payments

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of current interest rate.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes, for the information of the general public, this notice of the current interest rate to be computed on indemnity payments not made within a specified time under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: This notice, and the interest rate cited herein, is effective beginning March 1, 1985, and ending on June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This notice provides, for the information of all interested parties, the current interest rate to be applied by FCIC to late paid indemnities, and is applicable from March 1, 1985 until June 30, 1985.

Background

Although FCIC attempts to make all indemnity payments within 30 days of the filing of a proper claim, data processing backlog and the need for further investigation have on some occasions, delayed payment past the targeted date. FCIC believes, on those occassions where the delay is due to procedural requirements of FCIC and through no fault of the insured, that FCIC should pay interest on the net amount eventually found to be due the insured.

The interest payment, as outlined herein, will be effective for the first period of the 1985 crop year, beginning on March 1, 1985.

Pursuant to section 12 of the Contract Disputes Act the Secretary of the Treasury is responsible for computing and publishing the interest rate to be used in cases under that Act.

The interest rate established by the Secretary of the Treasury (as published in the **Federal Register** on December 27, 1984 at 49 FR 50357) for the six-month period beginning January 1, 1985 and ending June 30, 1985, and applicable by FCIC to late paid indemnities to policyholders during the period, beginning March 1, 1985 is 12⅛% (Twelve and one eighth) per centum per annum.

Done in Washington, D.C., on January 4, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 1, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-5598 Filed 3-7-85; 8:45 am]

BILLING CODE 3410-08-M

[Docket No. NOM 85-1]

New Policy Directions; Meeting

Time and date: 2:00 p.m., Tuesday, March 12, 1985

Place: Airport Marriott Hotel, St. Louis, Missouri. (Room number will be posted).

Status: Open.

Matters to be considered: Discussion of proposed new policy directions involving the delivery of crop insurance programs.

Contact person for more information: Michael A. Forgash, (202) 447-3287.

Authority: 7 U.S.C. 1501, et seq.

Done in Washington, D.C. on March 6, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 6, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-5695 Filed 3-6-85; 1:47 pm]

BILLING CODE 3410-08-M

Forest Service

Land and Resource Management Plan; Sawtooth National Forest; Idaho and Utah; Revised Notice of Intent To Prepare an Environmental Impact Statement

This Notice revises a previously issued notice of intent published in the **Federal Register** dated August 26, 1983, 48 FR 38865.

This Notice is being issued to inform interested publics of a change in the scheduled date of publication of the Draft Environmental Impact Statement (DEIS) and proposed Land and Resource Management Plan for the Sawtooth National Forest. These documents were previously scheduled for filing with the Environmental Protection Agency in December of 1984. The Supervisor of the Sawtooth National Forest now plans to file the Draft Environmental Impact Statement with the Environmental Protection Agency in April of 1985.

The completion of the DEIS and proposed Plan was delayed because of unforeseen requirements in planning analysis needed to meet public concerns.

The Sawtooth National Forest's proposed Plan, now being evaluated within the Forest Service, was selected from a range of alternatives for managing the National Forest, disclosed in the DEIS, which included:

(1) A "no-action" alternative, which represents continuation of present level of activity and management plans.

(2) Alternatives which represent Forest goals and levels of activity needed to meet various RPA Program levels of production.

(3) Alternatives formulated to resolve identified major public issues and management concerns, including roadless areas.

(4) Alternatives that address the implications of lowering costs for managing the National Forest.

The DEIS and proposed Plan address management of the 2.1 million acres administered by the Supervisor of the Sawtooth National Forest. Included is the Sawtooth National Recreation Area (SNRA). As part of the public review of the Plan, there will be at least one formal public hearing to address the wilderness study areas in the SNRA.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible official for the Forest's Land and Resource Management Plan and Environmental Impact Statement. Roland M. Stoleson, Sawtooth National Forest Supervisor, is responsible for preparation of these documents.

Requests for information should be sent to Robert L. Hendricks, Forest Planner, Sawtooth National Forest, 1525 Addison Avenue East, Twin Falls, Idaho 83301, telephone 208–737–3223.

Dated: February 25, 1985.

W.H. McCrum,

Acting Regional Forester.

[FR Doc. 85–5804 Filed 3–7–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Forest Land and Resource Management Planning and Public Land and Resources; Planning, Programming, and Budgeting

AGENCIES: Forest Service, USDA and Bureau of Land Management, Interior.

ACTION: Joint Notification of Land and Resource Management Planning Schedules

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the USDI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS**, Part A and Part B).

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979, and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the **Federal Register**, September 30, 1982). Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (NFMA). These rules require development of Regional Guides and Forest Plans. Each plan will include all management planning for resource and be supported by an environmental impact statement.

The Wilderness re-evaluation required as a result of the 9th Circuit Court decision and the increased role of economic analysis in the decision process have had major impacts on the Forest Service planning program. However with few exceptions, all draft Forest plans will be completed prior to September 1985.

Draft and final Regional Guides and Forest Plans and associated environmental impact statements will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Regional for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest Plan should contract the appropriate Regional Forester or Forest Supervisor.

DATE: Comments on the schedule will be accepted until April 8, 1985.

ADDRESS: Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Joyce P. Parker, Land Management Planning, P.O. Box 2417, Washington, DC 20013, (202) 447–6697.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[2] FEIS
NORTHERN REGION, Federal Building, Missoula, MT 59807. Regional Guide	1981	* 1981
Idaho		
Clearwater, Orofino 83544	1985	1986
Idaho Panhandle, National Forests;[3] Coeur d'Alene, Kaniksu, St. Joe; Coeur d'Alene 83814	1985	1986
Nezperce, Grangeville 83530	1984 *	1986
Montana		
Beaverhead, Dillon 59725	1985	1985
Bitterroot, Hamilton 59840	** 1985	1986
Custer, Billings 59103	1985	1986
Deerlodge, Butte 59701	1985	1986
Flathead, Kalispell 59901	* *1984	1985
Gallatin, Bozeman 59715	1985	1986
Helena, Helena 59601	* *1985	1986
Kootenai, Libby 59923	1985	1986
Lewis and Clark, Great Falls 59403	* *1984	1985
Lolo, Missoula 59801	* *1985	1986
ROCKY MOUNTAIN REGION, 11177 W. 8th Ave., Box 25127, Lakewood, CO 80225. Regional Guide	1981	* 1983
Colorado		
Arapaho—Roosevelt,[3] Ft. Collins 80521	1982	* 1984
Grand Mesa, Uncompahgre, and Gunnison,[3] Delta 81416	1983	* 1983
Pike and San Isabel,[3] Pueblo 81008	1982	* 1985
Rio Grande, Monte Vista 81144	1983	* 1985
Routt, Steamboat Springs 80477	1983	* 1984
San Juan, Durango 81301	1982	* 1983
White River, Glenwood Springs 81601	1983	* 1984
Nebraska		
Nebraska—Samuel R. McKelvie,[3] Chadron 69337	1982	* 1985
South Dakota		
Black Hills, Custer 57730	1982	* 1983
Wyoming		
Bighorn, Sheridan 82801	* 1984	1985
Medicine Bow, Laramie 82070	* 1984	1985
Shoshone, Cody 82414	1984	1985

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[3] FEIS
SOUTHWESTERN REGION, 517 Gold Ave., SW., Albuquerque, NM 87102. Regional Guide	1981	[4] 1983
Arizona		
Apache—Sitgreaves,[2] Springerville 85938	1985	1986
Coconino, Flagstaff 86001	1985	1986
Coronado, Tucson 85702	[4] [5]1985	1986
Kaibab, Williams 86046	1985	1986
Prescott, Prescott 86301	1985	1986
Tonto, Phoenix 85034	[4] [5]1985	1985
New Mexico		
Carson, Taos 87571	[4] 1985	1985
Cibola, Albuquerque 67112	[4] 1984	1985
Gila, Silver City 88061	[4] 1985	1986
Lincoln, Alamogordo 88310	1985	1986
Santa Fe, Santa Fe 87501	1985	1986
INTERMOUNTION REGION, 324 25th Street, Ogden, UT 84401. Regional Guide	1981	[4] 1984
Idaho		
Boise, Boise 83706	1985	1985
Caribou, Pocatello 83201	[4] 1985	1985
Challis, Challis 83226	1985	1985
Payette, McCall 83638	1985	1986
Salmon, Salmon 83467	1985	1985
Sawtooth, Twin Falls 83301	1985	1985
Targhee, St. Anthony 83445	[4] [5]1985	[4] 1985
Nevada		
Humboldt, Elko 89801	1985	1985
Toiyabe, Reno 89501	[4] 1985	1985
Utah		
Ashley, Vernal 84078	1985	1985
Dixie, Cedar City 84720	1985	1985
Fishlake, Richfield 84701	1985	1985
Manti—LaSal, Price 84501	1985	1985
Uinta, Provo 84601	[4] [5]1985	[4] 1985
Wasatch—Cache,[2] Salt Lake City 84138	1985	1985
Wyoming		
Bridger—Teton, [2] Jackson 83001	1985	1986
PACIFIC SOUTHWEST, 630 Sansome Street, San Francisco, CA 94111. Regional Guide	1981	[4] 1984
California		
Angeles, Pasadena 91101	1985	1986
Cleveland, San Diego 92188	1985	1986
Eldorado, Placerville 95667	1986	1987
Inyo, Bishop 93514	1986	1987
Klamath, Yreka 96097	[4] 1986	1987
Lassen, Susanville 96130	1986	1986
Los Padres, Goleta 93107	1986	1986
Mendocino, Willows 95988	1986	1987
Modoc, Alturas 96101	1986	1987
Plumas, Quincy 95971	1986	1986
San Bernardino, San Bernardino 92408	1986	1986
Sequoia, Porterville 93257	1986	1986
Shasta—Trinity,[2] Redding 96001	1986	1986
Sierra, Fresno 93721	[4] 1986	1987
Six Rivers, Eureka 95501	1986	1986
Stanislaus—Calaveras, Big Tree,[2] Sonora 95370	1986	1986
Tahoe, Nevada City 95959	1985	1986
Lake Tahoe Basin, Management Unit, South Lake Tahoe	1985	1986
PACIFIC NORTHWEST REGION, 319 SW Pine Street, P.O. Box 3623, Portland, OR 97208. Regional Guide	1982	[4] 1984
Oregon		
Deschutes, Bend 97701	[4] 1985	1986
Fremont, Lakeview 97630	1985	1986
Malheur, John Day 97845	1985	1986
Mt. Hood, Portland 97233	1985	1986
Ochoco, Prineville 97754	1985	1986
Rogue River, Medford 97501	1985	1986
Siskiyou, Grants Pass 97526	1985	1986
Siuslaw, Corvallis 97330	1985	1986
Umatilla, Pendleton 97801	1985	1986
Umpqua, Roseburg 97470	1985	1986
Wallowa—Whitman,[2] Baker 97814	1985	1986
Willamette, Eugene 97440	1985	1986
Winema, Klamath Falls 97601	1985	1986
Washington		
Colville, Colville 99114	1985	1986
Gifford Pinchot, Vancouver 98660	1985	1986
Mt. Baker—Snoqualmie,[2] Seattle 96101	1985	1986
Okanogan, Okanogan 98840	[4] 1985	1986
Olympic, Olympia 98501	1985	1986
Wenatchee, Wenatchee 98801	1985	1986
SOUTHERN REGION, 1720 Peachtree Road, NW., Atlanta, GA 30309. Regional Guide	1982	[4] 1985
Alabama		
National Forests in Alabama:[2] William B. Bankhead, Conecuh, Talladega, Tuskegee; Montgomery 36101	1985	1985
Arkansas		
Ouachita, Hot Springs 79101	[4] 1985	1985
Ozark—St. Francis,[2] Russellville 72801	[4] 1985	1985
Florida		
National Forests in Florida:[2] Apalachicola, Ocala, Osceola; Tallahassee 32301	1985	1985
Georgia Chattahoochee—Oconee,[2] Gainesvill 30501	[4] 1984	1985
Kentucky		
Daniel Boone, Winchester 40391	[4] 1985	1985
Louisiana		
Kisatchie, Pineville 71360	[4] 1984	1985
Mississippi		
National Forests in Mississippi:[2] Bienville, Delta, DeSoto, Holly Springs, Homochitto, Tombigbee; Jackson 39205	[4] 1985	1985
North Carolina		
National Forests in North Carolina,[2] Asheville 28802:		
Nantahala and Pisgah	[4] 1985	1985
Uwharrie and Croatan	1985	1986
Puerto Rico		
Carribbean, Rio Piedras 00928	[4] 1985	1985
South Carolina		
Francis—Marion	[4] 1984	1985
Sumter,[2] Columbia 29202	[4] 1985	1985
Tennessee		
Cherokee, Cleveland 37311	[4] 1985	1985
Texas		
National Forests in Texas:[2] Angelina, Davy Crockett, Sabine, Sam Houston; Lufkin 75901	1985	1986
Virginia		
George Washington, Harrisonburg 22801	[4] 1984	1985
Jefferson, Roanoke 24011	[4] 1985	1985
EASTERN REGION, 633 West Wisconsin Ave., Milwaukee, WI 53203. Regional Guide	1982	[4] 1984
Illinois		
Shawnee, Harrisburg 62946	1985	1985
Indiana and Ohio		
Wayne-Hoosier,[2] Bedford 47421:		
Wayne	1985	1986
Hoosier	[4] 1984	1985
Michigan		
Hiawatha, Escanaba 49829	1985	1986
Huron—Manistee,[2] Cadillac 49601	[4] 1985	1986
Ottawa, Ironwood49938	1985	1986
Minnesota		
Chippewa, Cass Lake 56633	[4] 1985	1985
Superior, Duluth 55801	[4] 1985	1985
Missouri		
Mark Twain, Rolla 65401	1985	1986
New Hampshire and Main		
White Mountain, Laconia 03246	[4] 1985	1985
Pennsylvania		
Allegheny, Warren 16365	[4] 1985	1985
Vermont		
Green Mountain, Ruthland 05701	1985	1986
West Virginia		
Monongahela, Elkins 26241	[4] 1985	1985
Wisconsin		
Chequamegon, Park Falls 54552	1985	1986
Nicolet, Rhinelander 54501	[4] 1985	1985
ALASKA REGION, Federal Office Building P.O. Box 1628, Juneau, AL 99802. Regional Guide	1981	[4] 1984
Alaska		
Chugach, Anchorage 99502	1982	[4] 1984
Tangass—Chatham, Sitka 99835	[4] 1989	[4] 1989
Tongass—Ketchikan 99901	[4] 1989	[4] 1989
Tongass—Stikine, Petersburg 99833	[4] 1989	[4] 1989

[1] Mailing address for each National Forest.
[2] Two or more separately proclaimed National Forests.
[3] DEIS and FEIS mean Draft and Final Environmental Impact Statements.
[4] Filed with EPA.
[5] One EIS will be filed for the Tongass National Forest.
[6] An earlier published Draft EIS will be supplemented or revised.

R.M. Housley,
Deputy Chief.
February 27, 1985.

Part B—Bureau of Land Management

Regulations governing resource management planning for the Bureau of Land Management administered lands (43 CFR 1601 and 1610) were published in the **Federal Register** on May 5, 1983. They became effective on July 5, 1983. Those regulations [43 CFR 1610.2(b)] require that the Bureau publish a planning schedule for the current and three succeeding Fiscal Years. The schedule below fulfills that requirement.

The formal start of the planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule for Fiscal Years 1985 and 1986. Where an environmental assessment (EA) is indicated on the schedule, the EA will be made available to the public and will be revised to respond to public comments, as appropriate.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted until April 8, 1985.

ADDRESS: Comments should be sent to Director (202), Bureau of Land Management, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ann Loose, (202) 653-9924.

Bureau Land Management Planning Schedule

District, State, and resource area	Plan name (major resource issues)	Fiscal year			
		1985	1986	1987	1988
Anchorage, AK:					
Peninsula	Bristol Bay Cooperative Management Plan (oil and gas, wildlife, fisheries, lands, minerals).	Final			
Peninsula	Southeast RMP (minerals, interagency cooperation, wildlife, lands, recreation, forestry).	Start		DEIS, FEIS	
Glennallen	South Central MFP-A (lands, ROW, wildlife)		EA		
Fairbanks, AK:					
Yukon	Steese RMP (wild river, caribou, oil and gas, minerals)	FEIS			
Yukon	White Mountain RMP (wild river, recreation, minerals, wildlife).	FEIS			
Yukon	Central Yukon RMP (oil and gas, settlement, subsistence, minerals, wildlife).	DEIS	FEIS		
Arizona Strip, AZ: Shivwits Vermillion.	Arizona Strip RMP (wildlife, recreation, minerals)	Start	DEIS	DEIS	
Phoenix, AZ:					
Lower Gila	Lower Gila South RMP (range, wilderness, minerals)	DEIS, FEIS			
Phoenix	Phoenix RMP (range, wilderness, minerals, lands)	Start	DEIS	FEIS	
Phoenix	Phoenix Wilderness EIS (wilderness)	PFEIS			
Safford, AZ: Safford/Phoenix	Eastern Arizona EIS (grazing)	DES	FEIS		
Yuma, AZ: Yuma, Havasu	Yuma RMP (recreation, lands, minerals, range)	FEIS			
Bakersfield, CA:					
Bishop	Bodie Coleville MFP-A (grazing, wildlife)		EA		
Bishop	Benton-Owens Valley MFP-A (grazing, wildlife)		EA		
Folsom	Sierra MFP-A (recreation, forestry, lands)			EA	
Susanville, CA: Eagle Lake/Surprise.	Eagle Lake/Cedarville Wilderness MFP-A (wilderness)	PFEIS			
Ukiah, CA: Arcata	King Range MFP (wilderness)	PFEIS			
California Desert, CA:					
El Centro, Barstow, Indio, Needles, Ridgecrest.	Desert 83-84 RMP-A (recreation, lands, grazing, wildlife).	EA			
Do	Desert 84-85 RMP-A (recreation, lands, grazing, wildlife).		EA		
Do	Desert 85-85 RMP-A (recreation, lands, grazing, wildlife).			EA	
San Diego	Metro Project Area MFP-A (wilderness)	PFEIS			
Grand Junction, CO:					
Grand Junction	Grand Junction RMP (wilderness, oil and gas, coal, recreation).	DEIS, FEIS			
Grand Junction	Whitewater MFP-A Jerry Creek (land exchange)	EA			
Grand Junction	Roan Creek MFP-A (ROW application, PSC conversion)	EA			
Craig, CO:					
White River	Raven Ridge ACEC MFP-A (rare plants)	EA			
White River	Special management MFP-A (rare plants, cultural resources, rarefish to be determined).		EA		
White River	Piceance Basin RMP (oil shale, wildlife, rare plants)	FEIS			
Little Snake	Little Snake RMP (range, coal, oil and gas, wilderness, wildlife).	DEIS	FEIS, PFEIS		
Montrose, CO:					
San Juan	San Juan/San Miguel RMP (coal, wilderness, range, cultural).	DEIS, PFEIS			
Uncompahgre	Uncompahgre RMP (coal, wilderness)		DEIS, FEIS		
Canon City, CO:					
Northeast	Northeast RMP (realty, oil and gas, coal)	FEIS			
Northeast	Kansas Planning Analysis (oil & gas, realty)	EA			
San Luis	San Luis Valley RMP (range, wildlife)				DEIS, FEIS.
Milwaukee, WI:					
Missouri	PA (ownership conflict, lack of geological data)	EA			
W. Virginia			EA		
Illinois		EA			
Indiana				EA	
Maryland	PA (lack of geological data)			EA	
New York					EA.
Pennsylvania					EA.
Wisconsin	PA (ownership conflict, lack of geological data)	EA			
Michigan	do	EA			
Ohio	do		EA		
Jackson, MS:					
Tennessee	PA (lack of geological data)	EA			
Kentucky	do	EA			
Louisiana	PA (ownership conflict, lack of geological data)		EA		
Florida	do			EA	
Georgia	PA (lack of geological data)		EA		
South Carolina	do				EA.
North Carolina	do				EA.
Boise, ID:					
Cascade	Cascade RMP (grazing, timber, land transfer, wildlife)		DEIS	FEIS	
Jarbidge	Jarbidge RMP (grazing, wilderness, wild horses, land transfer).	FEIS	PFEIS		
Burley ID: Snake River, Deep Creek.	Cassia RMP-A (land tenure)	EA			
Idaho Falls, ID: Medicine Lodge.	Medicine Lodge RMP (grazing wilderness, recreation, land tenure).	FEIS	PFEIS		
Salmon ID: Lemhi	Lemhi RMP (grazing, land tenure, minerals, wildlife, watershed).	DEIS	FEIS, PFEIS		
SHOSHONE, ID: Monument Bennett Hills.	Monument RMP (grazing, land tenure, wildlife, wilderness.	FEIS, PFEIS			
Coeur d' Alene: Emerald Empire, Cottonwood.	North Idaho MFP-A (roadless area)	EA			

BUREAU LAND MANAGEMENT PLANNING SCHEDULE—Continued

District, State, and resource area	Plan name (major resource issues)	Fiscal year			
		1985	1986	1987	1988
Miles City, MT: Powder River	Powder River (coal development, vegetation, wildlife, watershed, land pattern).	FEIS			
South Dakota	South Dakota RMP (non-energy realty, vegetation)	DEIS	FEIS		
Dickinson, ND: North Dakota	North Dakota RMP (coal, land)	Start		DEIS, FEIS	
Lewistown, MT:					
Havre Great Falls	West Hi-Line RMP (vegetation, land pattern, vehicle access, coal/oil and gas).			DEIS, FEIS	
Judith	Judith RMP (land pattern, access)		Start		DEIS, FEIS
Butte: MT:					
Garnet	Garnet RMP (forest management, vegetation, wilderness, land pattern, oil and gas).	FEIS			
Dillon	Centennial MFP-A (wilderness)		PFEIS		
Elko, NV: Elko	Elko RMP (grazing, lands, wilderness)	DEIS	FEIS		
Carson City, NV:					
Lahontan	Lahontan RMP (grazing, lands, wilderness)	FEIS			
Walker	Walker RMP (grazing, lands, wilderness)	FEIS			
Las Vegas, NV:					
Caliente	Caliente MFP-A (wilderness)	PFEIS			
Stateline—Esmaralda	Esmaralda RMP (grazing, lands, wilderness)	FEIS			
Battle Mountain, NV: Tonopah	Esmaralda RMP (grazing, lands, wilderness)	FEIS			
Albuquerque, NM:					
Rio Puerco	Rio Puerco RMP (grazing, land disposal, coal)	DEIS, FEIS			
Taos	Taos RMP (grazing, land disposal)		DEIS	FEIS	
Farmington	Farmington RMP (grazing, land disposal)			DEIS, FEIS	
Farmington	McKinney County Coal Exchange Proposal MFP-A (coal exchange).	EA			
Roswell, NM: Carlsbad	Carlsbad RMP (grazing, minerals, land tenure, access, special management areas).		DEIS, FEIS		
Las Cruces, NM:					
White Sands	White Sands RMP (grazing, land disposal, access, special areas).	DEIS, FEIS			
Socorro	Socorro RMP (grazing, land disposal, access)		Start		DEIS, FEIS
Las Cruces/Lordsburg	Navajo-Hopi exchange MFP-A (disposal)				
Do	NM-84-054 345 KV Line MFP-A (corridor)	DEIS, FEIS			
Statewide (NMSO)	Statewide Wilderness Study (wilderness)	DEIS	FEIS		
Tulsa, OK:					
Oklahoma	S. Canadian/Central OK Land Use Analysis (land disposal.	EA			
Do	Cimarron River N. Oklahoma Land Use Analysis (land disposal).		EA		
Burns, OR: Three Rivers	John Day RMP (grazing, land tenure, timber, fisheries)	FEIS			
Prineville, OR: Central Oregon Deschutes.	Two Rivers RMP (grazing, land tenure, fisheries)	DEIS,FEIS			
Statewide: High Desert, Warner Lakes, Three Rivers, Andrews, S. Malheur, N. Malheur, Baker, Central Oregon, Klamath, Myrtlewood.	Oregon Statewide Wilderness MFP-A (wilderness)	DEIS			PFEIS.
Vale, OR: Baker	Baker RMP (grazing, land tenure, timber, fisheries)		DEIS, FEIS		
Spokane, WA: Border Basin	Spokane RMP (grazing, land tenure, timber, ACECs)	FEIS			
Emal, UT: Bookcliffs	Bookcliffs RMP (tar sand, grazing, oil shale, oil and gas)	FEIS			
Salt Lake, UT:					
Bear River	Box Elder RMP (grazing, land tenure)	DEIS, FEIS			
Pony Express	Utah County RMP (land tenure, ROW, oil and gas, recreation).				DEIS, FEIS
Cedar City, UT:					
Beaver River, Kanab, Escalante.	Cedar, Beaver, Garfield, Antimony RMP (livestock, grazing, coal, ROW, land).	FEIS			
Dixie	Dixie RMP (land tenure, recreation)		Start		DEIS, FEIS
Escalante	Escalante RMP (coal, recreation)		Start		
Moab, UT:					
San Juan	San Juan RMP (livestock grazing, land tenure, recreation, oil and gas).		DEIS, FEIS		
San Rafael	San Rafael RMP (livestock grazing, oil and gas, recreation, tar sand).	Start		DEIS, FEIS	
Richfield, UT: Warm Springs House Range.	Warm Springs/House Range (livestock, grazing, land tenure, geothermal).		DEIS, FEIS		
Worland, WY: Washakie	Washakie RMP (range, wilderness)	DEIS	FEIS		
Rawlins, WY:					
Lander	Lander RMP (range, wilderness, oil and gas)	DEIS	FEIS		
Medicine Bow	Medicine Bow Coal Bypass MFP—A (coal)	EA			
Medicine Bow	Medicine Bow MFP-A (range, wilderness)		EA		
Rock Springs, WY:					
Kemmerer	Kemmerer RMP (range, oil and gas)	DEIS, FEIS			
Pinedale	Pinedale RMP (range, oil and gas, recreation)		DEIS, FEIS		
Big Sandy	Big Sandy MFP-A (realty)	EA			
Salt Wells	Salt Wells MFP-A (realty)	EA			
Casper, WY:					
Buffalo	Buffalo RMP (range, coal, wilderness)	FEIS			
Platte River	Platte River RMP (range, coal, wildlife, lands, minerals, forestry).	FEIS			

Key to Abbreviations

ACEC—Area of critical environmental concern.
DEIS—Draft environmental impact statement.
EA—Environmental assessment.
FEIS—Final environmental impact statement.
MFP—A—Management framework plan amendment.
PA—Planning analysis (only in Eastern States Office).
PD—Public domain.
PFEIS—Preliminary environmental impact statement (wilderness issues only).
RMP—Resource management plan.
ROW—Rights-of-way.

Date: February 28, 1985.

James M. Parker,

Acting Director.

[FR Doc. 85-5371 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-84-M 5001-64-M

Rural Electrification Administration

Alabama Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council of Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures 7 CFR Part 1794, has made a Finding of No Significant Impact with respect to a project proposed by the Alabama Electric Cooperative, Inc., (AEC). The project consists of the development of a fly ash disposal landfill for AEC's Tombigbee Electric Generating Plant near Jackson in Washington County, Alabama.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and AEC's Borrower's Environmental Report (BER) may be reviewed in the office of the Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382-8434, or at the office of Alabama Electric Cooperative, Inc., Mr. Charles R. Lowman, P.O. Box 550, Andalusia, Alabama 36420, telephone (205) 222-2571, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request to approve AEC's use of general funds, has reviewed the BER submitted by AEC and has determined that it represents an accurate assessment of the environmental impact of the proposed purchase of property and the development of a fly ash disposal landfill. General funds will also be used to purchase four 15-ton tandem dump trucks, one bulldozer, one water truck, one earth mover, one grader, and a ½-ton pickup truck. In addition, general funds will be used for construction of a 30 by 60 foot storage and maintenance building on the property site to be surrounded by a 50 by 150 foot fence that will include a parking area and a dry fly ash collection system to be constructed at the generation plant site. This system will be entirely within the boundary of the plant site.

Based upon AEC's BER, REA prepared an Environmental Assessment concerning the proposed landfill development and its impacts. REA concluded that the proposed approval of general funds use would not be a major Federal action significantly affecting the quality of the human environment. The BER and Environmental Assessment adequately consider potential impacts of the proposed landfill development on prime farmlands, wetlands, floodplains, cultural resources, federally listed threatened and endangered species or those proposed for listing or their critical habitat, air quality, water quality, and ambient noise levels. The no action alternative and various alternative proposals for fly ash disposal were considered. REA determined that the proposed fly ash disposal landfill is the preferred alternative because it best meets AEC's needs with a minimum of adverse impact to the environment.

REA has independently evaluated the proposed landfill and has concluded that approval of AEC's use of general funds for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: March 1, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-5559 Filed 3-7-85; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 656]

Exclusitrade, Inc. et al; Order Amending Temporary Denial of Export Privileges

In the matter of: Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., William Carlton Dart, individually and doing business as Display Systems, Inc., and Perpetuum, Inc., Robert William Haire, Sr., individually and doing business as Display Systems, Inc. and Exclusitrade, Inc., Raymond Shields Spitz.

By a Temporary Denial Order (TDO) issued on November 6, 1984 (49 FR 45468, November 16, 1984), Respondents were denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data.

Respondent Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., moved on December 5, 1984 to modify the TDO so as to authorize certain exports to the Wuxi Project in the People's Republic of China. Respondents William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc., and Robert William Haire, Sr., individually and doing business as Display Systems, Inc. and Exclusitrade, Inc., filed a similar motion on December 19, 1984. The U.S. Department of Commerce filed its reply to both motions on January 14, 1985. Both motions were heard in a closed hearing on January 16, 1985.

By an Initial Decision issued January 18, 1985, Respondents' motions were granted (a) for those Wuxi Project exports for which the TDO revoked previously issued individual validated licenses and (b) for those Wuxi Project exports that could be sent G-DEST or GLR but for the TDO, provided that all such exports in (a) and (b) are made in compliance with safeguards acceptable to the Department. The Initial Decision denied Respondents' motions with respect to those Wuxi Project exports for which applications for individual validated licenses were pending in the Department's Office of Export Administration when the TDO was issued.

On March 1, 1985, the Department and the Respondents reached an agreement (the Agreement) that set forth the safeguards required by the Initial Decision, and that added to those exports approved by the Initial Decision certain of the exports that it had denied. The Hearing Commissioner approves this addition. A copy of this Agreement has been submitted for the record.

Accordingly, it is ordered, the TDO is amended to permit the Respondents to

export, as an exception to the TDO's denial of all their export privileges, and subject to the condition that for each permitted export Respondents shall comply with the safeguards set forth in the Agreement, the following: (a) Certain equipment, related spare parts, and technical data authorized by individual validated licenses A777027, A569528, A594951, A618444, A618445, and A763274; and (b) certain equipment, related spare parts, and technical data that were described in Appendix A to Respondents' December 5 and 19, 1984 motions and that were described in Attachment 1 to the Agreement, and that could be sent G-DEST or GLR but for the TDO. This exception from the TDO for the exports in (a) and (b), subject to the condition regarding safeguards, shall also apply to Respondent Raymond Shields Spitz who, although a Respondent, was not a party to the motions.

This Amendment of the TDO is effective immediately.

Thomas W. Hoya,

Hearing Commissioner.

March 5, 1985, 10:50 am, EST.

[FR Doc. 85-5606 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-565-001]

Canned Tuna Form the Philippines; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY:

The Department of Commerce has conducted an administrative review of the countervailing duty order on canned tuna from the Philippines. The review covers the period August 1, 1983, through December 31, 1983, and 22 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period to be 0.25 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50134) a countervailing duty order on canned tuna from the Philippines and announced its intent to conduct an administrative review of the order. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of Review

Imports coverd by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under items 112.3020, 112.3040, and 112.3400 of the Tariff Schedules of the United State Annotated.

The review covers the period August 1, 1983, through December 31, 1983, and 22 programs: (1) An exemption from import taxes (Article 48 (f) of the Omnibus Investment Code); (2) an income tax deduction for labor and raw materials (Article 48(b) of the Code); (3) a tax credit for indirect taxes (Article 48(a) of the Code); (4) export packing credits; (5) an income tax deduction for overseas offices (Article 49(f)); (6) an income tax deduction for new brand names (Articles 48(e) and 49(g)); (7) an income tax deduction for export traders (Article 49(d)); (8) an income tax deduction for financial assistance (Article 49(e)); (9) government bank loans (Article 51); (10) private bank loans (Article 52); (11) equity investment by insurance companies (Article 52); (12) employee equity investment (Article 53); (13) a tax credit for net local content; (14) a tax credit for net local value; (15) preferential loan guarantees; (16) government equity investment; (17) foreign equity investment; (18) various financial services by the Export Credit Insurance and Guarantee Corporation; (19) various financial and marketing assistance by the Institute for Export Development; (20) an offsetting export tax; (21) preferential access to foreign exchange; and (22) World Bank import funding.

Analysis of Programs

(1) Exemption From Import Taxes (Article 48(f))

In 1982, the Philippine government combined most of its existing incentive programs into the Omnibus Investments Code ("the Code"). To be eligible for benefits under the Code, a firm must register with the Board of Investments ("the Board"), which administers the Code. Seven of the eight tuna companies reviewed are registered with the Board.

Article 48(f) of the Code allows only exporters to receive 100 percent exemptions from import taxes when importing capital equipment and spare parts for seven years following the firm's registration with the Board. Three of the firms took the exemptions during the review period.

All registered firms are also eligible for 50 percent exemptions of the same taxes under Article 45(d) of the Code. The Department determined during its investigation on this merchandise that Article 45 was generally available and therefore not a countervailable subsidy. To find the benefit under Article 48(f), we calculated the difference between exemptions received and exemptions that could be received under Article 45(d) and then divided by the firm's overall exports for 1983. We then weight-averaged the benefits by each firm's share to total exports to the U.S. and preliminarily find the benefit from this program to be 0.04 percent *ad valorem.*

(2) Income Tax Deduction for labor and Raw Materials (Article 48 (b))

Article 48(b) of the Code allows a Philippine-owned and registered exporter an income tax deduction for direct labor and local raw materials costs for five years following registration. One firm used this program during the review period. To calculate the benefit, we multiplied the amount of the deduction from taxable income by the corporate tax rate and divided the result by the firm's total exports for 1983. We then weight-averaged the benefit by the firm's share of total exports to the U.S., and preliminarily determine the benefit from this program to be 0.05 percent *and valorem.*

(3) Tax Credit for Indirect Taxes (Article 48(a))

Article 48(a) of the Code allows registered export producers to receive tax credits equal to the sales, specific taxes, and import taxes paid on the supplies, raw material and semi-manufactured products used in production.

The Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations) and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations).

We found that two firms did use these tax credits during the review period. However, during verification, we found that their credits were based on the import duties paid on imported packing materials, *i.e.*, physically incorporated goods. We preliminarily determine that the tax credits used by the two firms meet the first criterion, and were equal to the import duties paid. Therefore they provide no countervailable benefit duirng the review period.

(4) Export Packing Credits

The Philippine Central Bank offers a rediscounting program through the commercial banks. Upon receipt of a letter of credit from a foreign purchaser, an exporter may negotiate an "export packing credit," a pre-export loan, with a commercial bank based on the letter of credit. The commercial bank may then rediscount the packing credit with the Central Bank. Until November 18, 1983, Central Bank Circular 784 set the maximum interest rate the banks could charge under the program to "non-traditional" exporters (canned tuna exporters are included in this category) at 12 percent. Under the same circular, the Central Bank charged the commercial banks 3 percent for the rediscounting. On November 18, 1983, Circular 981 changed the maximum rate of 12 percent to the 90-day Manila Reference Rate minus two points, and for the rediscounting to 7 percent. If the commercial banks do not rediscount the loans, they may charge a commercial rate of interest on the loans.

We based our calculations on the actual interest paid rather than the maximum rates. For our benchmark interest rate, we took the weighted average interest rates for secured loans of one year or less in duration as found in the annual report of the Central Bank. To find the benefit for each loan, we took the difference between the actual interest paid and the interest the firm would have paid using our benchmark interest rate. We totaled the difference for each firm's loans and divided by that firm's exports during the review period. We then weight-averaged the benefit by the firm's share of total exports to the U.S. and preliminarily find the total benefit under this program to be 0.16 percent *ad valorem*.

(5) Other Programs

We also examined the following programs and preliminarily find that exporters of canned tuna did not use them during the review period.

A. Income tax deduction for overseas offices (Article 49(f) of the Ominbus Investments Code);

B. Income tax deduction for new brands names (Articles 48(e) & 49 (g));

C. Income tax deduction for export traders (Article 49(d));

D. Income tax deduction for financial assistance (Article 49(e));

E. Government bank loans (Article 51);

F. Private Bank loans (Article 52);

G. Equity investment by insurance companies (Article 52);

H. Employee equity investment (Article 53);

I. Tax credits for net local content;

J. Tax credits for net local value;

K. Preferential loan guarantees;

L. Government equity investment;

M. Foreign equity investment;

N. Various financial services by the Export Credit Insurance and Guarantee Corp.;

O. Various financial and marketing assistance by the Institute for Export Development;

P. Offsetting export tax;

Q. Preferential access to foreign exchange; and

R. World Bank import funding

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.25 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Section 707 of the Tariff Act provides that the difference between the deposit of estimated countervailing duties and the final calculation of the duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order. The Department therefore intends to instruct the Customs Service not to assess countervailing duties for shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after August 16, 1983, the date of the preliminary affirmative determination (48 FR 37051), and before October 31, 1983 (the date of the order), or entered, or withdrawn from warehouse, for consumption on or after October 31, 1983, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 4, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5609 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Cornell University, et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-095. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Viscoelastometer, Model DDV-II-C. Manufacturer: Toyo Baldwin Co., Japan. Intended use: Studies of high modulus fibers and thin films of polymers. Experiments will consist of characterization of structural

parameters—crystallinity, orientation, solvent content and relaxation temperature and of mechanical properties—stiffness, strength, loss tangent. The objectives of this research are to discover how to produce new stiff fibers and to study failure mechanisms in films and fibers. Application received by Commissioner of Customs: February 10, 1984.

Docket No. 84–278. Applicant: Cornell University, Materials Science Center, Room 625, Clark Hall, Ithaca, NY 14853. Instrument: Electron Microscope, Model JEM–4000 EX/TES with TTH 40 Holder. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for varied experiments in materials research. The experiments to be conducted will include but are not limited to the following:

(1) Structural and electrical characterization of silicon on sapphire.

(2) Studies of the mechanical properties of metallic glasses.

(3) Study of the influence of grain boundaries on the electrical transport properties of polycrystalline si films.

(4) Solar cell silicon studies.

(5) Microscopy studies of the structure and chemistry of melt phases in rocks.

(6) Study of structure of grain boundaries in Olivine.

(7) Microscopy studies of the structure of ceramic grain boundaries.

(8) Study of radiation-induced precipitation in tungsten (Rhenium) alloy.

Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84–285. Applicant: The Pennsylvania State University, Department of Mineral Engineering, Geomechanics, 104 Mineral Sciences Building, University Park, PA 16802. Instrument: Underground Service Chart Recorder. Manufacturer: McPhar Mine Systems, Inc., Canada. Intended use: Studies of active coal mine roof and pillar strata with the objective of improving mine safety and increasing coal production. In addition, the article will be used in the course Mng 545—Field Instrumentation to acquaint students with geotechnical field instrumentation. Application received by Commissioner of Customs: August 27, 1984.

Docket No. 85–086. Applicant: University of Nevada, Reno, Department of Range, Wildlife & Forestry, 1000 Valley Road, Reno, NV 89512. Instrument: Hand Held Ratioing Radiometer System, Model HHRR with Accessories. Manufacturer: Barringer Research Limited, Canada. Intended use: Study of the spectra of various range plant species and the associated soil surface. Data will be collected from an aircraft and on the ground. The spectral data will be used to identify, measure, and explain patterns of succession for arid range plant communities; to associate the brightness levels of the spectra with specific scene components to describe and measure forage productivity, carrying capacity and range condition; and to develop mathematical models using spectral data and statistical data derived from the spectral data to identify and measure plant succession, forage productivity, carrying capacity and associated range condition. Application received by Commissioner of Customs: February 5, 1985.

Docket No. 85–090. Applicant: Massachusetts Institute of Technology, Room 1–343B, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Direct Simple Shear Apparatus, Model H–12. Manufacturer: Geonor AS, Norway. Intended use: The instrument will be used in the Soil Mechanics research program for studies of particulate media. Both natural and artificial materials are to be studied to quantify the components which control performance. The initial state of the material as well as load history will be varied to better formulate a model for general behavior. Other application areas include performance prediction of embankments and large gravity platforms. Considerable research effort will be devoted to device improvements and procedure modifications. The instrument will also be used for demonstration purposes in the course Geotechnical Measurements and Exploration. Application received by Commissioner of Customs: February 7, 1985.

Docket No. 85–098. Applicant: Department of Interior, U.S. Geological Survey, Branch of Geophysics, Box 25046, Mail Stop 964, Denver, CO 80225. Instrument: Time-Domain Electromagnetic Prospecting System, Model EM 37–3. Manufacturer: Geonics Limited, Canada. Intended use: The instrument is intended to be used to measure the electrical conductivity of the earth, particularly to determine the properties of geothermal systems, groundwater aquifers, and mineral deposits for research purposes. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85–100. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, IL 61801. Instrument: Electron Microscope, Model JEM–4000EX with Accessories. Manufacturer: JEOL, Japan. Intended use: Studies of interactions between materials and gases at high magnifications. Problems of material degradation by the environment (hydrogen embrittlement, stress corrosion cracking, etc.) grain growth of ceramics, fracture of ceramics, polymer degradation and many others will be studied. Application received by Commissioner of Customs: February 13, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientifc Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–5607 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–791–010]

Galvanized Steel Wire Strand From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on galvanized steel wire strand from South Africa. The review covers the period October 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African galvanized steel wire strand to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24426) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on galvanized steel wire strand from South Africa (48 FR 19451, April 29, 1983) and announced its intent

to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African galvanized steel wire strand. Such merchandise is currently classifiable under items 642.1142 and 642.1144 of the Tariff Schedules of the United States Annotated.

The review covers the period October 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African galvanized steel wire strand to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its galvanized steel wire strand for export in containers. During the period of review, Haggie paid the domestic container rate for all shipments of galvanized steel wire strand, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as a part of the suspension agreement, agreed not to claim Category B and D benefits on exports of galvanized steel wire strand to the United States. Haggie has not yet filed its tax return for the period under review. In a subsequent review, after Haggie has filed its return, we will examine whether or not Haggie claimed Category B or D benefits for shipments made during the review period.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. invoice price on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows an upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of galvanized steel wire strand to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's.

The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits from GLISS for shipments of galvanized steel wire strand to the United States during the review period.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period October 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of imports of galvanized steel wire strand to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African galvanized steel wire strand during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Homer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5611 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Prestressed Concrete Steel Wire Strand From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on prestressed concrete steel wire strand from South Africa. The review covers the period January 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African prestressed concrete steel wire strand to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 17061) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on prestressed concrete steel wire strand ("PC strand") from South Africa (47 FR 22137, May 21, 1982) and announced its intent to conduct the next administrative review. As required

by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African prestressed concrete steel wire strand. Such merchandise is currently classifiable under item 642.1120 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African PC strand to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its PC strand for export in containers. During the period of review, Haggie paid the domestic container rate for all shipments of PC strand, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as a part of the suspension agreement, agreed not to claim Category B and D benefits on exports of PC strand to the United States. We examined Haggie's 1982 tax return and confirmed that the company made no claims not in accordance with the terms of the suspension agreement.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. value on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows a upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of PC strand to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits form GLISS for shipments of PC strand to the United States during the review period.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period January 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African PC strand during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5610 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Steel Wire Rope From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa. The review covers the period July 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African steel wire rope to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 14775) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa (47 FR 54130, December 1, 1982) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African steel wire rope. Such merchandise is currently

classifiable under items 642.1200, 642.1610, and 642.1650 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African steel wire rope to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its wire rope for export in containers. During the period of review, Haggie paid the higher domestic container rate for all shipments of wire rope, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as part of the suspension agreement, agreed not to claim Category B and D benefits on exports of wire rope to the United States.

Haggie has not yet filed its tax return for the period under review. In a subsequent review, after Haggie has filed its return, we will examine whether or not Haggie claimed Category B or D benefits for shipments made during the review period.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. value on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows an upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of wire rope to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's. The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits from GLISS for shipments of wire rope to the United States during the period of review.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period July 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African wire rope during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5808 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administraiton, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a certificate should be issued. An original and five (5) copies should be submitted not later than March 28, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate

of Review, application number 85-00005."

Applicant: Comet Rice, Inc., P.O. Box 1681, Houston, TX 77001, Telephone: (713) 447-7423

Application #: 85-00005

Date Deemed Submitted: February 25, 1985

Member: Farmers' Rice Cooperative, Box 698, West Sacramento, CA 95691

Summary of the Application:

Export Trade

(a) Rice, including wild rice, and rice products (rough rice, parboiled rice, milled rice, undermilled or unpolished rice, brown rice, coated rice, enriched rice, rice bran, rice polish, head rice, second head rice, brewers' rice, and flavored rice).

(b) Services (consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the export of rice and rice products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Comet Rice seeks certification:

(1) On a transaction-by-transaction basis, to join with its member to bid for the sale of, and to sell, U.S. rice and rice products to the Export Markets.

(2) For each bid or sale, to negotiate and agree with its member on the terms of their participation in the bid or sale, including the amount of rice and rice products each will commit to the sale and the price to be bid, and, in order to negotiate those terms, exchange:

(a) Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale of United States business plans, strategies or methods of Comet Rice, Inc. or its member) that is already generally available to the trade or public,

(b) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, and

(c) Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing).

(3) To negotiate with its member to provide or contract for the provision of the storage, shipping and delivery, and associated services needed for each sale.

(4) Individually or jointly with its member, with respect to each bid, to refuse to include in their bid any other company having rice and rice products for export.

(5) To purchase additional quantities of rice and rice products from other U.S. suppliers for resale in the Export Markets.

Dated: March 5, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-5644 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 50327-5027]

Indefinite Suspension of Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has suspended indefinitely the implementation of Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems.

SUMMARY: On March 1, 1983, notice was published in the **Federal Register** (48 FR 8526-8527) that the Secretary of Commerce had approved Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems. Since the approval of this standard, it has been introduced into the voluntary standards process for consideration as an international consensus standard. As a result of action by the Consultative Committee for International Telephone and Telegraph (CCITT), the message format specifications detailed in FIPS 98 have been adopted for international use with modifications. Because it is in the best interest of the U.S. government to use standards that are compatible with those used by industry and approved by the international standards community, NBS intends to revise FIPS 98 to make it consistent with CCITT recommendation X.409.

Accordingly, the Secretary of Commerce has decided to suspend the implementation of FIPS 98 indefinitely, pending its revision.

FOR FURTHER INFORMATION CONTACT: Dr. John Heafner, Chief, Systems and Network Architecture Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3537.

Dated: March 5, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-5533 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Act; Section 306(i) Satisfactory Progress Findings for State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to issue findings.

SUMMARY: Notice is hereby given by the Office of Ocean and Coastal Resource Management (OCRM) of its intent to issue findings pursuant to Section 306(i) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(i), on the satisfactory progress of State coastal management programs in inventorying and designating areas that contain coastal resources of national significance. These findings will be based on a report prepared by OCRM which describes the activities coastal States have undertaken to inventory, designate and protect coastal resources of national significance such as wetlands, beaches, dunes, barrier islands, reefs, estuaries, and fish and wildlife habitats. The report also identifies the type of progress coastal States have made in achieving the objectives of Section 306(i) of the CZMA. The report indicates that the 28 coastal States with Federally approved programs 24 States have made fully satisfactory progress and 4 States have made partially satisfactory progress in carrying out the requirements of Section 306(i). Both findings make States eligible for Section 306A grants, but those States

found to be making only partially satisfactory progress must complete recommendations to correct the identified deficiencies within time schedules noted in the report in order to ensure future eligibility for Section 306A financial awards.

Interested persons are advised that they may submit comments on this report within 30 days from the date of this notice. The comments will be considered before the findings are issued.

Requests for the report, further information and all comments should be made to:

Ben Mieremet, Technical Assistance and Coastal Hazards Coordinator
or
Doris Grimm, Environmental Specialist, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–4124

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: March 1, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–5588 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-08-M

Endangered Species; Receipt of Application for Permit; Cold Springs Harbor Fish Hatchery and Aquarium

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Cold Springs Harbor Fish Hatchery & Aquarium, Norman Soule, Director.

b. Address: P.O. 535, Route 25A, Cold Spring Harbor, New York 11724.

2. Type of Permit: Scientific Research.

3. Names and Number of Animals: Shortnose Sturgeon (*Acipenser brevirostrum*), 74.

4. Type of Take: Capture, by gillnet, of ripe adults for propagation research.

5. Location of Activity: Hudson River, New York (river Miles 87–154).

6. Period of Activity: April 15–June 1, 1985.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, MA 01930.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5646 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit for Marine Mammals; West Coast Whale Research Foundation

On January 7, 1985, notice was published in the **Federal Register** (50 FR 873) that an application had been filed with the National Marine Fisheries Service by the West Coast Whale Research Foundation for a Permit for the potential harassment of humpback whales (*Megaptera novaeangliae*) for the purpose of scientific research as described in the application.

Notice is hereby given that on February 28, 1985, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the West Coast Whale Research Foundation, subject to certain conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5647 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Oregon State University

On February 17, 1984, Notice was published in the **Federal Register** (49 FR 6143) that an application had been filed with the National Marine Fisheries Service by Dr. Bruce R. Mate, Marine Science Center, Oregon State University, Newport, Oregon 97365 to take by harassment and satellite radio tagging up to 800 bowhead whales (*Balaena mysticetus*) over a four year period for scientific research.

Notice is hereby given that on March 1, 1985, and as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C.–1543), the National Marine Fisheries Service issued a Permit to Dr. Bruce R. Mate to take the endangered species requested subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW. Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 168, Juneau, Alaska 99802.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5648 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Modification No. 1 to Permit No. 376; Marineland Amusements Corp.

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) Public Display Permit No. 376 issued to Marineland Amusements Corporation, 6610 Palos Verdes Drive

South, Rancho Palos Verdes, California 90274, on April 23, 1982 (47 FR 17605), is modified to extend the period of authorized take two (2) years.

Accordingly, Section B–4 is deleted and replaced by: "4. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective February 26, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5650 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Dolphin Research Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dolphin Research Center (P53B).

b. Address: P.O. Box 2875, Marathon Shores, Florida 33052.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 8.

4. Type of Take: Capture and maintain.

5. Location of Activity: Florida West Coast.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5651 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Triple Five Corporation, Ltd.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Triple Five Corporation Ltd. (P348A).

b. Address: Suite 900, Capital Place, 9707–110th Street, Edmonton, Alberta T5K269, Canada.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Bottlenose dolphin *(Tursiops truncatus)*, 4.

4. Type of Take: Capture for permanent maintenance.

5. Location of Activity: West Coast of Florida.

6. Period of Activity: Two (2) years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5649 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fur Seals; Availability of an Issue Paper

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an Issue Paper on North Pacific Fur Seals.

SUMMARY: An issue paper has been prepared for use in the development of the United States' position at the Tokyo Meeting Concerning North Pacific Fur Seals, to be held April 12 to 19, 1985. The Tokyo Meeting will include Parties to the Interim Convention on Conservation of North Pacific Fur Seals. Topics of the meeting are scientific and conservation issues relating to North Pacific fur seals (*Callorhinus ursinus*).

DATE: Comments on the issue paper will be accepted through March 29, 1985. This issue paper was used for

discussion at a public meeting held on February 14, 1985, in Washington, D.C.

ADDRESS: To receive a copy of the issue paper please call Ted I. Lillestolen at (202) 634–7257 or write to the following office: Office of International Fisheries, F/M3, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Ted I. Lillestolen, 202–634–7257.

Dated: March 5, 1985.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 85–5645 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations with the Government of India To Review Trade in Category 313 (Cotton Sheeting)

March 5, 1985.

On January 30, 1985 the Government of the United States requested consultations with the Government of India with respect to cotton sheeting in Category 313. This request was made on the basis of Paragraph 16 of the agreement between the Governments of the United States and India relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of December 21, 1982, which provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA may establish a prorated specific limit of 10,602,245 square yards for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 313, produced or manufactured in India and exported to the United States during the period which began on January 30, 1985 and extends through December 31, 1985.

The Government of the United States has decided, until such time as a mutually satisfactory solution is reached in consultations, to control imports in this category during the 90-day consultation period which began on January 30, 1985 extends through April 29, 1985 at a level of 3,359,218 square yards.

In the event the level established for Category 313 during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to the prorated twelve-month level described below.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57534), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data of information regarding the treatment of Category 313 under the Bilateral Cotton, Wool and Man-Made Fiber Agreement with the Government of India, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies of Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

SUPPLEMENTARY INFORMATION: On December 27, 1984 a letter was published in the **Federal Register** (49 FR 50236) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985. In the letter published below, pursuant to the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 313, exported during the indicated ninety-day period, in excess of the designated level of restraint.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Category 313—Cotton Sheeting

India—Market Statement
January 1985.

U.S. imports of Category 313 from India totalled 10.5 million square yards for the year ending November 1984, a substantial increase over the 417,000 square yards imported a year earlier.

The domestic industry producing cotton sheeting fabric is adversely affected by imports. While the market expanded in early 1984 as the U.S. economy improved, the U.S. producer's share of the market for domestically produced and imported sheeting declined. Depite a strong first quarter showing, domestic production was relatively flat for January–September, reflecting the eight percent decline in second and third quarter production. This downturn coincided with a substantial loss of market share for domestic producers; from 51.3 percent in January–September 1983 to 42.0 percent in 1984. Production for 1984 is expected to be one percent below the level of 1983.

Total imports of cotton sheeting fabrics increased 38.1 percent, from 304.1 million square yards ending November 1983 to 420.0 million square yards year ending November 1984. This was the first time that imports of cotton sheeting surpassed the amount domestically produced.

The import to production ratio of Category 313 increased from 94.8 percent in January–September 1983 to 138.1 percent in January–September 1984.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain

cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during 1985.

Effective on March 11, 1985, paragraph one of the directive of December 2, 1984 is hereby amended to include a limit of 3,359,218 square yards [1] for cotton textile products in Category 313, produced or manufactured in India and exported during the ninety-day period which began on January 30, 1985 and extends through April 29, 1985.

Textile products in Category 313 which have been exported to the United States before January 30, 1985 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5572 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after January 29, 1985.

CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazard Advisory Panel on Di(2-Ethylhexyl)Phthalate; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: A Chronic Hazard Advisory Panel, established by the Commission to provide advice about the potential chronic hazards presented by Di(2-ethylhexyl)phthalate (DEHP) in consumer products, has scheduled a meeting to hear oral comments from the public on this subject. On the day following that meeting, the Panel will meet in open session to consider information which it has received to date.

DATES: The meeting to hear oral comments will begin at 9:00 am on April 3, 1985 and is expected to conclude by 5:00 pm. Requests to make presentations should be received by March 20, 1985. The Panel also will meet in open session on April 4, 1985; this meeting also will start at 9:00 am and is expected to conclude by 5:00 pm.

ADDRESS: The meeting will be at 5401 Westbard Avenue, Bethesda, Maryland, in room 456.

FOR FURTHER INFORMATION CONTACT: Requests to make presentations at the public meeting should be submitted to Colin B. Church, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6957.

SUPPLEMENTARY INFORMATION: The Chronic Hazard Advisory Panel on DEHP is a seven-member group which has been established to advise the Commission concerning the potential chronic hazard of cancer associated with the use of consumer products containing DEHP. The Panel, convened in January, 1985, is addressing the concern that the presence of DEHP as a plasticizer in children's products may result in a substantial exposure of children to a substance that is known to cause cancer in animals.

At its meeting on April 3, the Panel will hear public comments on matters related to its work. Those planning to make presentations on April 3 should submit their requests and typewritten copies or outlines of their presentations to Mr. Church by March 20, 1985. In order to accommodate all who wish to speak, presentations will be limited to 20 minutes or less. Written comments are also welcome, if received by Mr. Church by April 1, 1985, for consideration by the Panel at its April 4 meeting.

On April 4, the Panel will meet in open session to consider oral and written public comments received as of that date.

Dated: March 5, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-5636 Filed 3-7-85; 8:45 am]

BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84-1 83CD]

1983 Cable Royalty Distribution Proceeding; Prehearing Conference

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of Prehearing Conference.

SUMMARY: The Copyright Royalty Tribunal will hold a prehearing conference to discuss scheduling and other procedural matters regarding the 1983 royalty distribution proceeding.

This prehearing conference is being held at the request of various copyright owners.

DATE: The prehearing conference will be held at 10:00 a.m., Tuesday, March 26, 1985.

ADDRESS: The prehearing conference will be held at 1111 20th Street, NW., Room 458, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION:

Order Concerning Prehearing Conference in 1983 Cable Royalty Distribution Proceeding

In its October 1, 1984 notice the Copyright Royalty Tribunal (Tribunal) requested comments on (1) whether a controversy existed with regard to the distribution of 1983 cable royalties; (2) scheduling the 1983 royalty distribution proceeding; and (3) the procedures to be followed in that proceeding. Comments were submitted by interested Copyright Owners on November 15, 1984. The Tribunal subsequently received from outside counsel, retained by the Tribunal, a report recommending the adoption of certain procedural suggestions for the conduct of the cable royalty distribution proceedings.

The Copyright Owners comments demonstrated that controversy does exist with regard to the 1983 fund. The comments also revealed areas of agreement and areas of disagreement respecting the scheduling of and other procedural matters concerning the 1983 case.

By letter dated March 1, 1985, the Copyright Owners jointly requested the Tribunal to hold an on-the-record prehearing conference for the purpose of considering issues raised by the November 15 comment. They further requested that the Tribunal, at the prehearing conference or as soon thereafter as possible, adopt a schedule for and set of procedures governing the 1983 proceeding.

The Tribunal believes that the prehearing conference requested by the Copyright Owners would assist in the efficient conduct of the 1983 royalty distribution proceeding. Accordingly, it will hold such a conference beginning at 10:00 a.m. on March 26, 1985. As soon thereafter as is possible, the Tribunal will (1) determine when it will declare a controversy over the 1983 fund within the meaning of Section 111(d)(5)(B) of the Copyright Act of 1976, 17 U.S.C. Section 111(d)(5)(B); (2) establish a schedule for the 1983 royalty distribution proceedings; and (3) adopt a set of procedures which will govern that proceeding. In order to narrow the issues that need to be resolved at the prehearing conference, the Copyright

Owners are hereby directed to provide the Tribunal, no later than March 19, 1985 with a single joint memorandum identifying (1) each of the procedural proposals (including scheduling) which any party wishes the Tribunal to consider adopting; and (2) the positions of each of the parties with respect to each such proposal.

The Copyright Owners have further requested the Tribunal to release the report on procedures prepared by outside counsel. The Tribunal believes it would be useful for the parties to have access to the relevant portions of the report in formulating their positions and the joint memorandum described above. Accordingly, copies of those portions of the report which the Tribunal has decided to release are available at the Tribunal offices.

Dated: March 4, 1985.

Edward W. Ray,

Commissioner, Acting Chairman.

[FR Doc. 85-5528 Filed 3-7-85; 8:45 am]

BILLING CODE 1410-15-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 1, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Advanced Air-Vehicle Surveillance and Warning Technologies will meet at Hanscom AFB, MA, on March 25–26, 1985 (9:00 a.m.-5:00 p.m.) to review surveillance technologies and system concepts for application to air-vehicle detection systems. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-5605 Filed 3-7-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

U.S. Army Medical Research and Development Advisory Committee, Subcommittee on Trauma; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 USC Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of meeting: April 18 and 19, 1985.

Time and place: 0830 hours, Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed agenda: This meeting will be open to the public from 0830 to 1045 hours on 18 April for the administrative review and discussion of the scientific research program of the Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), U.S. Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1100–1700 hours on 18 April and from 0830–1700 on 19 April for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. R. A. McHenry, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800 (415/561–4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski, Ph.D.,

Colonel, MSC, Deputy Commander for Science and Technology.

[FR Doc. 85-5629 Filed 3-7-85; 8:45 am]

BILLING CODE 3710-08-M

Change in Annotation on Section 10721 Rate Tender Format (Optional Form 280) of Items 15 and 17

AGENCY: Military Traffic Management Command, Army Department, Department of Defense.

ACTION: Notice of Rate Tender Annotation Application Revision.

SUMMARY: For those carriers doing business with the Department of Defense and the Military Traffic Management Command (MTMC), the use of SSS (Signature Security Service) in Item 15, PROTECTIVE SERVICES, on the Optional form 280 (Uniform Tender of Rates and/or charges for Transportation Services) will be eliminated.

Effective February 15, 1985, with the concurrence of the General Services Administration, annotation of Optional Form 280 and the tender preparation instructions will be revised. Tender format changes are:

(1) Eliminating the use of the "SSS" block, Item 15, under "PROTECTIVE SERVICES". In lieu of the use of this block;

(2) Under item 17, "ACCESSORIAL SERVICE" annotate a charge for a "Signature and Tally Record (STR)", or "Signature Service Record" in Item 17A "RATE or CHARGE": Enter the rate or charge and basis (cents per cwt; charge per shipment, etc. . . .) If an "STR" is to be furnished at no additional charge, enter "no charge" in Item 17A;

(3) Item 17B, DESCRIPTION OF SERVICE: Annotate: "STR".

Additional Information

Effective 31 July 1984, MTMC established the minimum transportation protective service for shipments of sensitive conventional arms, ammunition, and explosives, and CONFIDENTIAL classified material. Signature Security Service (SSS) was eliminated as the minimum transportation protective service, and the use of a Signature and Tally Record (STR), using a DD Form 1907, replaced SSS for use on those shipments not requiring a transportation protective service. For further information call Betty Yanowsky at (202) 756–1356.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-5630 Filed 3-7-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board; Meeting

ACTION: Notice of Open Meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Laurence R. Jahn, Chairman, EAB, and Lieutenant General E. R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, April 2, 1985, to 11:00 a.m., Thursday, April 4, 1985.

PLACE: The meeting will be held at the Bay Harbor Inn (Main Conference Room), Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ronald G. Kelsey, Assistant Director of Civil Works for Environmental Programs, or Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, D.C. 20314-1000, (202) 272-0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

2 April—Tuesday—A.M. Session

8:00—Meeting convened—Opening remarks
9:00—Old business
10:45—Presentation—Director of Civil Works

P.M. Session

1:00—Ocean Disposal: The Scientific Approach to Site Selection and Management
- National Perspective
- London Dumping Convention & Ocean Disposal
- Tampa Harbor—Case History

2:15—Panel Discussion
- Tampa Harbor Case Study—Views on Scientific Approach to Dredged Material Management
- Dialogue with EAB

5:00—Meeting recessed

3 April—Wednesday—A.M. Session

8:00—Water/Wetlands Resources Activities in Florida
- The State of Florida's Water Resources Program and Objectives
- The Role of Jacksonville District in Addressing Florida's Water Resources Problem

9:00—Regulatory Activities
- Federal/State Partnership in Water Resources Regulation: National Perspective
- The Corps Regulatory Program in Florida
- The State Regulatory Program

10:00—Panel Discussion
- Perspectives on Regulatory Activities in Florida
- Dialogue with EAB

P.M. Session

1:30—Water Resources Development Activities: Florida Everglades Case Study
- Florida's "Save our Everglades Program"
- The National Park Service and the Everglades—Perspectives, Problems, and Programs
- The Corps and the Everglades

3:15—Panel Discussion
- Perspectives on Saving the Everglades Program
- Dialogue with EAB

5:00—Meeting recessed

4 April—Thursday—A.M. Session

8:00—EAB Report to the Chief of Engineers
10:00—Chief of Engineers Response
10:30—Public Comments
11:00—Meeting Adjourned.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 85-5628 Filed 3-7-85; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Matching Program; Department of the Navy (U.S. Marine Corps) City of New York

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of a proposed continuing computer matching program between the U.S. Marine Corps and the City of New York.

SUMMARY: The U.S. Marine Corps proposes to match by computer certain Marine Corps allotment records with records of recipients of food stamps and public assistance in the City of New York to detect any fraud and abuse by recipients determined not to meet the eligibility criteria. The matches will be made under a written agreement with the City of New York and the Marine Corps. This will be an ongoing matching program conducted at least semiannually. A projected completion date cannot be determined. A matching report is set forth below.

DATE: This action will be effective without further notice April 8, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the following address: Commandant of the Marine Corps (MPI-60), Headquarters, U.S. Marine Corps, Washington, D.C. 20380-0001, telephone: (202) 694-1452.

FOR FURTHER INFORMATION CONTACT: Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380-0001, telephone: (202) 694-1452.

SUPPLEMENTARY INFORMATION: A copy of this notice has been provided to Congress (President of the Senate and Speaker of the House of Representatives) and to the Director of the Office of Management and Budget on March 1, 1985.

Set forth below is the information required by paragraph 5.f(1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982).

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
March 5, 1985.

Report of a Matching Program, U.S. Marine Corps/City of New York, New York

a. *Authority:* Title 42, U.S. Code, Subchapter IV, "Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services" and Title 7, U.S. Code, Chapter 51, "Food Stamp Program"; 5 U.S.C. 552a, Privacy Act of 1974; Inspector General Act of 1978 (Pub. L. 95-452).

b. *Program Description:* Using computer tapes prepared by the City of New York, the U.S. Marine Corps, as the matching agency, will match the names on the tape against its computer data base of individuals receiving allotments authorized by Marine Corps members. These New York tapes will contain the names and addresses of current public assistance/food stamp recipients. These will be matched to the names, addresses, and dollar amounts of current Marine Corps allotments. "Hit" data will be supplied on a paper listing to New York City for visual review and screening. The Marine Corps will use a specially developed computer program to implement this match. After the initial match, this project will be an ongoing matching program conducted at least semiannually. A projected completion date for the entire project cannot be determined at this time. The City officials will visually review the "hit" data to ensure that the records pertain to the same individuals and make any follow-up determinations. In those situations where there is any question as to eligibility, the recipient will be personally contacted by the City of New York to resolve the issue of the individual's eligibility under public assistance/food stamp programs. No benefits will be discontinued solely on the basis of the "hit" data listings. Also, no Marine Corps bestowed rights, privileges, or benefits of individuals, Marine Corps allottors or recipient allottees, will be terminated based on a "hit" or on records provided by the City

of New York in connection with this program. This proposed program will be under written agreement between the City of New York and the U.S. Marine Corps.

c. *Records to be Matched:* Names and addresses of current public assistance/food stamp recipients from the New York City Department of Income Maintenance File. Names, addresses, and dollar amounts of current Marine Corps allottees from the Marine Corps system of records identified as MFD00004, entitled "Bond and Allotment (B&A) System" described in the **Federal Register** at 48 FR 25970, June 6, 1983, as amended (new routine use) at 49 FR 49163, December 18, 1984.

d. *Period of the Match:* The matching will begin as soon as possible after this public notice becomes effective as set forth under "**DATE**" in the preamble of this notice. Additional matches may be made upon request of the City of New York at intervals of not less than six months. A projected completion date of this continuing matching program cannot be determined at this time.

e. *Security:* Only U.S. Marine Corps personnel who will perform the actual matches shall have access to the Marine Corps file and the New York City computer tapes. Only the list of "hits" will be turned over to personnel from the City of New York. The New York City personnel will have access only to the details of the "hits" and not to other information or names in the Marine Corps files. The City intends to retain the listings provided for six months and storage will be in locked cabinets. Upon completion of the match, the computer tapes, provided by the City, will be returned to the City and no copies will be retained by the Marine Corps.

f. *Retention and Disposition of Records:* The Marine Corps will not retain or copy the computer tapes provided by the City. The computer tapes provided to the Marine Corps shall remain the property of the City of New York in the temporary custody of the Marine Corps. The computer tapes will be returned to the City along with the "hit" data. The City of New York will retain the listings received from the Marine Corps for only six months and will dispose of them by shredding or burning. The Marine Corps will not provide the "hit" data developed by this match to any other Federal, State or local agencies.

[FR Doc. 85-5553 Filed 3-7-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 8, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 5, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Institutional Payment Summary (IPS) & IPS Batch Report
Agency Form Number: ED 255-3b IPS, ED 225-3c IPS Batch Report
Frequency: Quarterly
Affected Public: Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 78,000; Burden Hours: 97,500
Recordkeeping Burden: Recordkeepers: 5,200; Burden Hours: 2,600.

Abstract: The Institutional Payment Summary (IPS) is used by institutions of higher education to report cumulative payment data for the students receiving Pell Grants at the institution. Adjustments to an institution's Pell Grant funding level will be made based on the information contained on this form and the Student Aid Reports (SARs) that accompany the IPS. The IPS Batch Report is a report from the Department to the institution that recaps the processing of the latest submission of payment documents with an IPS.

Type of Review Requested: Revision; Extension
Title: Request for Payment of 1985-86 Pell Grant Award, Notice of Termination/Leave of Absence, and ADS Student Report—Request for Additional Payment
Agency Form Number: ED 304, ED 304-1, ED 304-2
Frequency: On occasion; Semi-annually; Annually
Affected Public: Individuals or households; Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 122,700; Burden Hours: 97,755
Recordkeeping Burden: Recordkeepers: 900; Burden Hours: 135.

Abstract: The forms are used by the students and financial aid officers that participate in the Pell Grant Program under the Alternative Disbursement System to request payment of their Pell Grants, request all additional payments, and notify the Department when a student terminates his or her enrollment. These documents also request verification of previously submitted data which as used to calculate a student's payments.

Type of Review Requested: Extension
Title: Application to Participate in State Student Incentive Grant Program
Agency Form Number: ED 1268
Frequency: Annually

Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 171
Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 57.

Abstract: The State Student Incentive Grant Program uses matching Federal/State funds to provide a nationwide system of grants to help qualified college students. This application form is used to obtain from State agencies information the Department needs to obligate program funds and for program management. Signed assurances document State qualifications and State commitment to administer the program in compliance with the statute.

Type of Review Requested: Existing
Title: Financial and Performance Reports under the Graduate and Professional Opportunity Fellowships Program.
Agency Form Number: ED 591A, ED 591B and ED 404A
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 130; Burden Hours: 5,580
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Report forms are utilized to obtain information from grant recipients to assure that Federal funds were expended within the provisions of all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

Type of Review Requested: New
Title: Institutional Release of 1984–85 Unexpended Balances for the College Work-Study, Supplemental Educational Opportunity Grant and National Direct Student Loan Programs
Agency Form Number: E40–4P
Frequency: Annually
Affected Public: Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 2,300; Burden Hours: 1,150
Recordkeeping Burden: Recordkeepers: 2,300; Burden Hours: 115.

Abstract: This form will allow institutions to report anticipated 1984–85 unspent funds for the Campus-Based Programs, so these unspent funds can be redistributed as supplemental 1985–86 awards to institutions with unmet 1984–85 needs.

Office of Elementary and Secondary Education

Type of Review Requested: Reinstatement
Title: Financial Status Report and Instructions for Performance Status Report—State Educational Agency and Desegregation Assistance Center Programs
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 146; Burden Hours: 876
Recordkeeping Burden: Recordkeepers: 146; Burden Hours: 292.

Abstract: Grantees under Title IV of the Civil Rights Program are required to submit financial and performance status reports annually. The reports are used to monitor compliance with terms and conditions of grant awards. S.F. 296–1 Financial Status Report and the Title IV Civil Rights Act Instructions for Performance Status Reports are utilized by grantees to submit reports.

Type of Review Requested: Extension
Title: Financial Status and Grant Performance Report—Indian Education Programs
Agency Form Number: ED 354, 354–1
Frequency: Annually
Affected Public: State or local educational agencies; Tribal schools; Indian tribes; Indian organizations; Indian institutions; Federally supported elementary and secondary schools for Indian children; Institutions of higher education
Reporting Burden: Responses: 1,200; Burden Hours: 3,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: These forms are required from each grantee annually. The grantee reports the amount of funds spent, amount remaining, number of students participating in the project, and the extent to which the project achieved its objectives.

Office of Vocational and Adult Education

Type of Review Requested: Revision
Title: State-Administered Vocational Education Program Improvement Projects—Abstracts and Final Reports
Agency Form Number: ED 590
Frequency: On occasion
Affected Public: State or local governments
Reporting Burden: Responses: 684; Burden Hours: 513
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This form will be used to collect data and an abstract about State-administered projects for research, personnel development and curriculum development in vocational education. The affected public will be the program improvement units of the State Boards of Vocational Education.

Type of Review Requested: Reinstatement
Title: The Carl D. Perkins Vocational Education Act of 1984 (P.L. 98–524)—State Plan
Agency Form Number: ED 576–3
Frequency: Annually; Triennially, then biennially
Affected Public: State or local governments
Reporting Burden: Responses: 53; Burden Hours: 5,300
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Pub. L. 98–524 requires State Boards for Vocational Education to submit a three-year State plan (and a two-year State plan thereafter) with annual revisions as the Board deems necessary in order to receive Federal funds. Program staff review the plans to ensure that proposed actions comply with the various requirements of the statute.

[FR Doc. 85–5618 Filed 3–7–85; 8:45 am]
BILLING CODE 4000–1–M

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Applications for a Fiscal Year 1985 Award.

Applications are invited for a new project under the Educational Media Research, Production, Distribution and Training program.

Authority for this program is contained in sections 651 and 652 of Part F of the Education of the Handicapped Act. (20 U.S.C. 1451, 1452)

Applications may be submitted by profit and non-profit public and private agencies, organizations, and institutions.

The Educational Media, Research Production, Distribution, and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

Closing date for transmittal of applications: An application for a new

project must be mailed or hand delivered on or before April 15, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.026, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama	New Mexico
Arizona	New York
Arkansas	Northern Mariana Islands
California	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Guam	Pennsylvania
Hawaii	Puerto Rico
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Trust Territory
Maine	Utah
Massachusetts	Vermont
Michigan	Virgin Islands
Missouri	Virginia
Montana	Washington
Nebraska	West Virginia
Nevada	Wyoming
New Hampshire	
New Jersey	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional and local entities may submit comments directly to the Department.

Because the comment period under the Order has been shortened for this grant competition, it is very important that applicants contact the State single point of contact and make arrangements to comply with the State's review requirements. State single points of contact have been alerted to this shortened time through a concurrent letter.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 25, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.026), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its application. Do not send applications to the above address.

Available funds: It is estimated that approximately $1.5 million will be available for support of one project for the manufacture of Line 21 large-scale-integrated circuit chips during Fiscal Year 1985. This estimate of funding level does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priority for funding: The Secretary selects for funding the priority for a project to manufacture Line 21 large-scale-integrated circuit chips to ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population. A notice of final funding priority is published in this issue of the **Federal Register**.

Application forms: Application forms and program information packages are expected to be available for mailing on March 13, 1985.

These materials may be obtained by writing to the Captioning and Adaptation Branch, Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511-M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information

package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820–0028)

Applicable regulations: Regulations applicable to this program include the following:

(a) The regulations governing the Educational Media Research, Production, Distribution and Training program (34 CFR Part 332).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Chief, Captioning and Adaptation Branch, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 4088), Washington, D.C. 20202. Telephone: (202) 732–1172.

(Catalog of Federal Domestic Assistance No. 84.026, Handicapped Media Services and Captioned Films)

(20 U.S.C. 1451, 1452)

Dated: March 5, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–5617 Filed 3–7–85; 8:45 am]

BILLING CODE 4000-01-M

Educational Media Research, Production, Distribution and Training

AGENCY: Department of Education.

ACTION: Final funding priority for fiscal year 1985.

SUMMARY: The Secretary issues a final funding priority for the Educational Media, Research, Production, Distribution and Training program. To ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population, the Secretary establishes a single priority for Fiscal Year 1985 for a project to manufacture Line 21 integrated chips.

EFFECTIVE DATE: This priority will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Division of Innovation and Development, Department of Education, 400 Maryland Avenue SW., Room 4088, Switzer Building, Washington, D.C. 20202. Telephone: (202) 732–1172.

SUPPLEMENTARY INFORMATION: The Educational Media, Research, Production, Distribution and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

In 1972 the Federal Government, through the former Office of Education, initiated the development of the closed captioned Line 21 system to make television accessible to the Nation's hearing impaired population. Upon completion of the development of the system, the Department supported the creation of the National Captioning Institute to provide captioning services to the broadcasting industry and helped subsidize 100,000 large-scale-integrated circuit chips which made the manufacture of Line 21 decoders possible.

Closed captioning is a system that uses Line 21 of the broadcasting signal to transmit captions (subtitles) which may be made visible only on television sets that are equipped with decoders for the benefit of viewers with hearing impairments.

The system was implemented in March, 1980, and has resulted in cooperative efforts between the public and private sectors to provide closed captioned television to hearing impaired Americans. All major networks are making closed captioned programs available. Federal funding supports approximately 40% of current programming, the networks support approximately 30%, and corporate advertisers, foundations, and contributions account for the remaining 30%.

The original stock of Line 21 decoders will be depleted over the next few months. The supply of large-scale-integrated circuit chips needed to replenish the stock of decoders is nearly exhausted. Because of the highly specialized nature of the product and the very small market, subsidized production of the decoders is essential to ensure that hearing impaired people will continue to be able to have access to the television medium. Closed captioning provides the only acceptable system that makes this access possible. Open captioning which would appear on all television sets is disturbing to the general viewing audience and, therefore, is not an acceptable alternative to the broadcasting industry and private sector supporters of captioning services. The Congress, which has appropriated funds annually to fund closed captioning, recognized this dilemma and indicated in report language that $1.5 million should be spent to assist in the underwriting of the manufacture of large-scale-integrated circuit chips to be incorporated into Line 21 decoders to ensure a continuing supply. The Senate Report accompanying S. 2836 states that Congress: "Has included $1,500,000 to assist in underwriting the manufacture of new integrated circuit chips for incorporation into the new Line 21 decoder to be produced by mid-1985."

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(a) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to publish priorities in proposed form and to offer interested parties the opportunity to comment on the proposed priorities. However, because of the Congressionally recognized need to begin production of Line 21 large-scale-integrated circuit chips no later than mid-1985, the Secretary has determined that publication of this document as a proposed priority for public comment is impracticable and contrary to public interest under 5 U.S.C. 553(b)(B).

This priority must become effective before the award of a grant for the production of Line 21 large-scale-integrated circuit chips can be made. That award must be made immediately if the Congressional deadline is to be met. The use of regular procedures for the proposed priority would involve a substantial delay in the effective date of this priority resulting from: (1) The period for public comments, (2) a further period for the review of any comments received and preparation, clearance, and publication of the priority in final form, and (3) the delayed effective date required by section 431(d) of the General Education Provisions Act, which precludes a rule from taking effect for 45 to 84 days, depending on Congressional adjournments.

The current supply of large-scale-integrated circuit chips will soon be depleted and no chips will be available for additional decoders unless production can commence over the next few months. The Secretary believes that if there are no chips available for additional decoders, private sector contributors and the networks who support this system will begin to withdraw their support. As stated above, the Congress indicated in report language that $1.5 million should be spent to subsidize the production of additional chips, and specified that production should be underway by mid-1985. However, these funds were not made available until November 8, 1984 (the date of enactment of the Department's Appropriation Act, Pub. L. 98-619). Under these circumstances there is not adequate time to solicit public comment on this priority. Even without taking public comment, the Secretary must solicit applications for a minimum of thirty days, evaluate those applications under the applicable regulations, and then make the award. After the award is made, the grantee must arrange for the production of Line 21 large-scale-integrated circuit chips. This will require the grantee to secure the services of a qualified electronics firm, which will then have to manufacture the Line 21 large-scale-integrated circuit chips. The grantee will then have to develop a plan for a fully assembled unit (i.e., large-scale-integrated circuit chip set, circuit board, and adapter unit). This unit will have to be assembled and then tested.

The grantee must also arrange for the manufacture of 50,000 assembled Line 21 decoders. Then, in order for the Line 21 decoders to be available to the hearing impaired population, the grantee will have to provide for their marketing and retailing.

This lengthy process requires an extremely tight schedule. The Secretary believes that invoking the exception to notice and public comment procedures under 5 U.S.C. 553 is essential.

Final Priority

The Secretary establishes a priority for applications for a project to manufacture Line 21 large-scale-integrated circuit chips to ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population.

The selection of this final priority is based upon the Congressional appropriation report language indicating that $1.5 million should be spent under Pub. L. 98-619 to underwrite the production of a second generation of Line 21 decoders before the current supply is exhausted.

This final priority will support a single award to an organization which has the technical expertise and knowledge to assure that the hearing impaired population is better served by improving and miniaturizing the existing decoder integrated circuit design for the Line 21 closed captioning system.

The applicant shall submit a working plan for the subsequent production of Line 21 decoder modules as part of the application. The plan shall provide for a fully assembled unit (i.e., large-scale-integrated (LSI) circuit chip set, circuit board, and adapter unit) with evidence of commitment from one or more manufacturers and retailers to assure production and sale of the units to begin no later than September 15, 1985. The plan shall contain a timeline for testing and production and an estimated retail price for the assembled units to be marketed to hearing impaired consumers. The plan shall also provide assurances that no less than 50,000 Line 21 decoder modules will be produced for incorporation into the units for marketing to consumers at the estimated price.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(20 U.S.C. 1451, 1452)

Dated: March 5, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-5616 Filed 3-7-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Solicitation of Cooperative Agreement Proposals; Cascades Thermal Gradient Drilling

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE-SCO7-85ID12580 on Exploration and Research to Define the Geothermal Resource Potential of the U.S. Cascades.

SUMMARY: The Department of Energy, Idaho Operations Office, desires to receive and consider for support proposals to enter into a Cooperative Agreement to perform the drilling of 3,000 feet or deeper thermal gradient holes and to collect data. DOE will cost share up to 50% of the cost of drilling the hole and associated data collection. DOE will require access to the hole for further data and experiments for a specified period of time after drilling. The primary objective of the program is to stimulate geothermal resource development of the Cascades region. Funding is estimated at $1,000,000 in fiscal year 1985, anticipating a cost-sharing of 1-8 Cooperative Agreements.

Minimum Requirements

To qualify for evaluation under the SCAP, the proposer must meet the following qualification criteria: The proposed site must be located within the Cascades volcanic region of the United States; the proposal must include a cost-share plan in which DOE's share shall not exceed 50 percent; the proposed hole must be a minimum of 3,000 feet deep; the proposer must agree to complete the hole and allow DOE access to the hole for data acquisition.

DATES: The SCAP will be issued during March, 1985. A preproposal conference will be held with the time and place to be determined. Proposals are due April 29, 1985.

Contacts

Potential proposers desiring to receive a copy of the SCAP should request it in writing within 15 calendar days from the date of this notice from: Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401, ATTN: Elizabeth M. Hyster, Contracts Management Division.

Issued at Idaho Falls, Idaho, on February 15, 1985.

J.F. Marmo,

Director, Contracts Management Division.

February 15, 1985.

[FR Doc. 85-5615 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in March 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and

natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its fourth meeting on Wednesday, March 27, 1985, starting at 9:00 a.m., in the Lubbock Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.

2. Discuss the individual study assignments of the Worldwide Refining Trends Task Group.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on February 28, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-5584 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

International Energy Agency Report

AGENCY: Department of Energy.

ACTION: Request for comments.

SUMMARY: The International Energy Agency's Coal Industry Advisory Board recently completed a technical study on the effect of coal quality and ash characteristics on boiler operations. The report, which will be published in the next several months, is available in draft form. It states that the efficiency and economics of coal-fired boilers would be improved if boiler operators had access to better data on the combustion characteristics of different types of coal.

The Department of Energy would appreciate receiving comments on this report from coal companies, utilities, and any other interested parties.

DATE: Comments should be received on or before April 8, 1985.

ADDRESS: Copies of the draft report are available from the Office of the Assistant Secretary for Fossil Energy (FE-1), Department of Energy, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Biggerstaff, Office of the Assistant Secretary for Fossil Energy, Department of Energy, Washington, D.C. 20585, (202) 252-4700.

Issued in Washington, D.C., February 28, 1985.

William A. Vaughan,

Assistant Secretary Fossil Energy.

[FR Doc. 85-5585 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Orders to Shell Oil Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial orders to Shell Oil Co. and notice of opportunity for objection.

I. Introduction

Shell Oil Company ("Shell"), One Shell Plaza, Houston, Texas 77001, is a major refiner engaged in the production and the refining of crude oil and the marketing of petroleum products. Shell was therefore subject to the Manadatory Petroleum Price and Allocation Regulations ("Regulations") which were in effect from August 1973 through January 28, 1981.

During all or part of the period between September 1973 and January 1981 (the audit period), Shell operated refineries and marketed refined petroleum products throughout the United States. The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") conducted an audit of Shell and determined that the firm violated the Regulations.

Pursuant to 10 CFR 205.192(c), ERA hereby gives notice that ERA issued five (5) Proposed Remedial Orders ("PROs") to Shell on February 15, 1985. ERA also gives notice of an opportunity for objection thereto. In accordance with 10 CFR 205.192(c), a copy of the PROs with confidential information deleted may be obtained from the DOE.

II. Issuance of Proposed Remedial Orders

1. Proposed Remedial Order for Case Nos. RSHB00304, RSHB00305, RSHB00201

This PRO alleges that Shell assigned improper and excessive May 15, 1973 prices to consumers, retailers, and resellers of gasoline and distillates, as well as to consumers and resellers of propane, thereby calculating excessive sales and maximum allowable prices during the period of price controls from August 1973 to January 1981.

As a remedy, ERA proposes three possible alternatives to a transaction by transaction maximum allowable price calculation for all purchasers of the covered products involved in this action. The first alternative, if adopted, would require the calculation of the difference between the correct and incorrect May 15, 1973 prices in all instances where Shell imposed an unlawfully high May 15, 1973 price. The difference would be ordered refunded. The second alternative, if adopted, would require the recalculation of the maximum allowable prices for sales only to customers whose purchase prices included an unlawfully high May 15, 1973 price. Also, recoveries in all sales of the covered product—both sales involving and sales not involving excessive May 15, 1973 prices—would be determined, and resultant overrecoveries would be calculated. Overcharges resulting from both of these calculations would then be ordered refunded. The third alternative, if adopted, would require, for the period prior to September 1974, the calculation described in the second alternative and for the period September 1974 forward the calculations described in the first alternative. In the opinion of the ERA, the proposed remedies are more properly focused on persons directly affected by Shell's violations and require less burdensome calculations for determining the refund amount than the transaction-by-transaction calculations that could otherwise be required.

2. Proposed Remedial Order No. RSHB00306

This PRO alleges that Shell failed to establish a lawful class of purchaser system for its sales of aviation jet fuel, and also failed to establish lawful May 15, 1973 prices for aviation jet fuel based on actual transactions.

The PRO offers two alternative remedies. The first would require Shell to calculate and to refund to its aviation jet fuel customers the difference between the correct and incorrect May 15, 1973 prices multiplied by the respective volumes of jet fuel sold. The second alternative would require Shell to determine, after establishing a correctly structured class of purchaser system and ultimately a correct maximum allowable price for each class of purchaser during each month of measurement, whether its actual sales prices exceeded those maximum allowable prices during the regulatory period. Overcharges would then be refunded.

3. Proposed Remedial Order No. RSHM00101

This PRO alleges that Shell incorrectly calculated and reported its increased costs of gasoline during the period October 1974 through December 1976 and therefore overstated its banked costs available for passthrough in sales of gasoline. The violation was a product of Shell's failure to deem recoveries at its refiner-operated retail outlets on the basis of the maximum amount Shell actually applied of the permissible three-cent per gallon additional increment allowed at such stations pursuant to the retail price equalization rule, 10 CFR 212.83(h)(2)(iv)(A).

As a remedy, the PRO proposes that Shell be ordered to recalculate its maximum allowable selling prices for the regulatory period. Specifically, in making such calculations, Shell would be required to assume that the highest portion of the maximum three-cent additional increment charged in any sale at any refiner-operated retail outlet was charged in all sales at all refiner-operated retail outlets. Shell would then be required to refile its RMCARs for the period October 1974 through January 1981, restating its recoveries and costs available for recovery in accordance with the regulations.

4. Proposed Remedial Order No. RSHM00401

This PRO alleges that Shell unlawfully revised and altered calculations of its unrecouped costs (banks) and maximum allowable prices by changing elections it had previously made with respect to the reallocation of costs from one product category to another. These improper retroactive reallocations occurred throughout the regulatory period.

As a remedy, the PRO directs Shell to employ the reallocations contained in its original filings in calculating the amounts of increased costs available for recovery in all product categories for all months from August 1973 through January 1981. Shell is liable for any overcharges brought about by the above recalculations, plus interest on those overcharges. The recalculated costs must be used in all future refilings of Shell's RMCARs and in the determination of the amount of Shell's refund liability in this or any other proceeding.

5. Proposed Remedial Order No. RSHL01401

This PRO alleges that Shell violated the non-product cost regulations during the period from February 1, 1975 through December 31, 1976 (the audit period) by incorrectly calculating non-product cost increases for its interest, refinery fuel, marketing, pollution control, and utility cost categories. Shell's improper calculations resulted in overstatements of increased non-product costs available for passthrough in the prices charged for covered petroleum products during the audit period. Consequently, Shell may have charged prices for covered petroleum products which exceeded maximum allowable prices.

As a remedy for this violation, the PRO proposes that Shell be ordered to recompute all reported non-product cost increases lawfully attributable to interest, refinery fuel, marketing, pollution control, and utility costs for all months included in the audit period. In the event that Shell's recalculated nonproduct costs result in overcharges, the amount of such overcharges, plus interest, shall be remitted to the DOE for appropriate disposition.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all of the proposed orders described in Section II above with DOE's Office of Hearings and Appeals. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed orders. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

The Notice must be filed, in duplicate, by 4:30 p.m. EST on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on the following person in each of the identified PRO proceedings pursuant to 10 CFR 205.193(c): George Kielman, Assistant Chief Counsel for Administrative Litigation, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue SW., Room 3H-017, Washington, D.C. 20585.

No data or information which is confidential shall be included in any Notice of Objection.

Requests for copies of any of the proposed orders with confidential information deleted, should be identified by ERA Case Number and be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C., this 1st day of March 1985.

Avrom Landesman,

Director, Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-5652 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order; Gulf Oil Corporation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Gulf Oil Corporation ("Gulf"). The agreement proposes to resolve matters relating to Gulf's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. ERA has assessed the effects of Gulf's alleged regulatory violations resolved by this proposed agreement, and has determined that the maximum amount

Gulf could have overcharged is approximately $135 million. This amount, plus an additional amount for interest, represents Gulf's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. Gulf disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that Gulf's possible liability for overcharges and interest be settled for $142 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the settlement, including assessments of litigation risks in the significant areas of dispute between ERA and Gulf.

There is a strong probability that the government would not prevail in all of the twenty or more individual disputes with Gulf. The loss by the government of one or several issues would reduce Gulf's maximum possible overcharge liability substantially and disproportionately in comparison to the dollar amounts of issues which were lost. Thus, ERA has tentatively concluded that a compromise settlement for $142 million—an amount exceeding the maximum possible overcharges—is favorable to the government and in the public interest.

If the Consent Order is made final, Gulf would pay DOE $142 million, plus interest accrued from the date of execution. The entire amount of Gulf's payment would be submitted to the Office of Hearings and Appeals (OHA) for disbursement through the administrative claims process promulgated in 10 CFR Part 205, Subpart V. Under those procedures, any person who claims to have suffered injury from Gulf's alleged overcharges would have the opportunity to submit a refund claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice and shoud be addressed to: Gulf Consent Order Comments, RG–13, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, D.C. 20585.

Following this comment period, on April 18, 1985, ERA will conduct a public hearing in the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. at 10:00 a.m. to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be finalized by DOE. Requests to make presentations must be received in writing by 5:00 p.m. on the thirtieth day following publication of this Notice, and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT:
Edward Levy, Assistant Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8900.

SUPPLEMENTARY INFORMATION:

I. Introduction

Gulf is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 until January 28, 1981), Gulf engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Gulf's compliance for the period September 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined pertroleum products in which it believes that Gulf had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose which involved Gulf's accounting procedures in which ERA disagreed with Gulf's accounting procedures in which ERA disagreed with Gulf's calculation of the amounts of increased costs which were incurred and eligible for recovery through product price increases. These apparent cost errors are not the same as, and do not necessarily translate into, overcharge liabilities.

The regulations governing the pricing of refined petroleum products were complex. The starting point for determining the maximum lawful sales price in any month for products covered by the regulations ("covered products") was the refiner's May 15, 1973 selling prices to its various classes of purchaser. A refiner was permitted to increase those prices only to the extent necessary to recover specified categories of cost increases incurred as compared to those costs incurred in the month of May, 1973. For example, refiners could recover increased costs of acquiring crude oil and refined products ("product costs"); and their labor, marketing, manufacturing and interest costs ("non-product costs").

If a refiner failed to fully recover the cost increases incurred in the preceding month, it could "bank" those unrecovered costs for recovery (subject to certain limitations) in succeeding months. The regulations required refiners to allocate those recoverable costs to product categories, and provided some discretion to refiners to reallocate those costs among product groups.

Having specified the amount of increased costs eligible for recovery, the extent to which unrecouped "banked" costs could be recovered, and the allocation of those increased costs to product categories, the regulations thereby enabled refiners to calculate the maximum amount of increased costs eligible for recovery in each month. Thus, a refiner calculated its maximum lawful sales price for each covered product to each class of purchaser, which was the sum of its May 15, 1973 price plus the increased costs available for recovery. A refiner could recover its increased costs by increasing its prices by any amount up to levels at which the full amount of recoverable increased costs would be recovered in the form of increased prices. A refiner infrequently charged the price it calculated to be its maximum lawful price. As a consequence, an error made in cost calculations for a particular month did not necessarily result in overcharges to purchasers.

Even if the government were to prevail in each of its enforcement proceedings, ERA determined that Gulf would have had total undisputed recoverable costs which were $946 million in excess of those recovered through product price increases in the 88 months of controls. However, ERA alleges that in some of those months Gulf's product pricing practices would have caused a direct refund obligation of $28 million, and that some $430 million in cost and recovery adjustments would cause another $11 million of overcharges for refined products.

Thus, in Gulf's case, ERA calculated that the alleged overcharges in sales of refined products total, at most, $39 million. In addition, ERA preliminarily determined that Gulf may be liable for a maximum of approximately $96 million in crude oil overcharges. Gulf's potential total liability for overcharges resolved by this proposed settlement, therefore, is believed by ERA to total $135 million. Gulf contends that the amount is largely based upon projections for which there is little or no support and that, in many instances, ERA has failed to reasonably apply the regulations given the factual circumstances and the regulatory ambiguities and inconsistencies; accordingly, Gulf would contend that $135 million is a substantial exaggeration of its maximum possible overcharge liability.

ERA has preliminarily agreed to this settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues. The settlement calls for Gulf to pay $142 million plus interest from the date of execution, under the terms of the Consent Order, to discharge in full its obligations under the price and allocation regulations, subject to certain stated exclusions. Under the terms of the proposed agreement, the amount paid by Gulf would be submitted to OHA for disbursement through the administrative claims process promulgated pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Gulf was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset the alleged cost and recovery violations and thus negate the possibility of overcharges on refined products. One issue on unequal passthrough of costs at various of Gulf-operated retail stations, as well as three issues concerning Gulf's May 15, 1973 prices, and the alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

During the negotiations with Gulf, ERA examined all the alleged regulatory violations and the amount of costs it determined Gulf should be allowed in the calculation of the company's maximum lawful prices and total overcharge exposure. Gulf presented factual information relevant to its calculations of increased costs and selling prices. This enabled ERA to correct factual errors in its audit information, which accrued both to the detriment and benefit of Gulf. Additionally, ERA was able to supplement its audit data with other information on the company's business activities relevant to its pricing practices.

A. Areas of Dispute

The two major areas of dispute between ERA and Gulf concern alleged errors in calculating maximum lawful prices for crude oil produced by Gulf, and recovery issues related to alleged understatements of certain of Gulf's May 15, 1973 selling prices and to alleged unequal price increases effected by Gulf at some of its company-operated service stations. In addition, ERA has raised fifteen or more other issues related to Gulf's claimed costs of crude oil, purchased products, non-product expenses, and allocation of costs to covered products. Those cost issues, amounting to $430 million, would increase Gulf's maximum overcharge liability by only $11 million.

1. *Crude Oil Overcharge Disputes.* ERA has alleged that Gulf produced and sold crude oil from several of its properties at prices in excess of ceiling prices. After a review of information made available to ERA by Gulf in the negotiation process and consideration of recent developments in related cases, ERA believes that the aggregate amount of such violations is $96 million. In addition to specific clerical errors discovered by EPA, these alleged overcharges arose from the manner in which Gulf designated its properties for purposes of the crude oil price regulations, determined certain posted prices, and calculated the average daily production of the well on some of its producing properties for purposes of justifying exempt stripper well prices.

In arriving at the $96 million of maximum overcharge liability for these issues, ERA included estimated violations based on extrapolations to unaudited properties and/or unaudited time periods.

2. *Recovery Disputes.* ERA has contended that Gulf increased its prices for gasoline at its company-operated service stations in unequal increments, and that Gulf's reported cost recoveries for all company-operated stations should be deemed to have been at the highest level of increase for such stations, *or* that Gulf should refund the differences between the higher and lower increases. The first alternative would mean that Gulf would reflect some $80 million of additional cost recoveries in its filings over a six-year period; because of the high level of Gulf's unchallenged cost banks, ERA estimates that little, if any, overcharges would be added to the maximum $11 million that ERA calculated in connection with the $430 million in cost issues discussed above. The second alternative, that of measuring the refund amounts necessary to effect equal cost passthrough at all company-operated stations, would mean that Gulf could be liable for nearly $21 million of direct cash liability, excluding interest. In ERA's analysis of the overall settlement value, this issue was considered as a separate potential liability for Gulf.

ERA's audit also disclosed several issues which affected the May 15, 1973 selling prices utilized by Gulf to compute its maximum prices during the period of price controls. ERA has contested the classification of certain customers of Gulf's Product Supply Department, which in turn affected the assigned May 15, 1973 prices; Gulf's reclassification of its former GoCal dealers from "branded" to "unbranded" dealers, and Gulf's use of higher May 15, 1973 prices for those dealers after the GoCal brand was discontinued; and Gulf's removal of certain dealer discounts which ERA alleged were customary as of May 15, 1973. Although these issues would affect the theoretical maximum prices for those groups of customers but may not have resulted in overcharges, ERA considered, on a per gallon basis, the differences between the May 15, 1973 prices Gulf utilized and those alleged by ERA to have been in the nature of a cash refund. The total amount of those issues was just over $7 million excluding possible interest, which would be a suitable remedy for proven violations of that type.

B. Determination of Maximum Overcharge Liability

Utilizing only those costs that ERA determined were proper for Gulf, and considering the recoveries or refunds

which ERA believed should have been effected by Gulf, ERA calculated the approximate maximum amount of possible overcharges for which Gulf might be liable during each month of price controls in an effort to determine whether Gulf had overcharges. By comparing ERA's calculations of available costs with the amounts of costs Gulf actually recovered in the sales of its products, and the additional potential liability related to the recovery issues, the agency was able to determine Gulf's maximum liability for refined product overcharges. In addition, ERA considered the overcharged alleged and projected in connection with its crude oil pricing claims against Gulf.

Under the regulations, a refiner was allowed to "bank" any increased costs in a given month that it lawfully could have recovered in its product prices but did not. Costs could be "banked" and used (subject to certain limitations) in later months in pricing products. For the period of controls after late 1975, Gulf accumulated cost banks on an accelerated basis because the prices Gulf charged were generally not sufficient to recover all of its claimed costs. As calculated by ERA, Gulf's banks were sufficient to absorb all but $11 million of the $430 million in cost adjustments alleged by ERA. Thus, the $430 million in cost issues relate to a relatively minor amount of Gulf's maximum refund liability.

As discussed above, Gulf's potential cash liability for the recovery issues, unequal application, and May 15, 1973 prices was quantified by reference to the total amount of refunds which would remedy the allegedly unequal prices and erroneous May 15, 1973 prices. That refund amount was approximately $28 million.

For the crude oil pricing allegations, ERA determined Gulf's maximum liability by summing the amounts of the alleged violations arising out of the properties actually audited and the additional amounts projected for possible violations on unaudited properties and unaudited time periods. The total of alleged crude oil overcharges was $96 million, and the combination of alleged refunds related to crude oil and refined product sales amount to a maximum of $135 million.

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA reviewed its allegations of overcharges, which are comprised of three components: $96 million related to crude oil pricing, $28 million related to refined product recovery issues, and $11 million related to refined product cost issues. These amounts were based on audit samples, estimates, projections and extrapolations. These variables, and the complexity of auditing a company as large as Gulf, make the identification of precise numbers difficult.

ERA's assessment of the settlement value particularly focused on the crude oil pricing disputes which represent over 70 percent of Gulf's $135 million maximum overcharge liability, and secondarily, on the four issues involving cost recoveries on refined product sales which appear to involve another 20 percent of Gulf's maximum potential overchange liability. Unlike ERA's cases involving many other refiners, the numerous cost issues amounting to several hundred million dollars have little effect on Gulf's overcharge liability; even in ERA's most optimistic case, $430 million of cost adjustments (which do not include the $28 million of alleged refund liability related to the equal application and May 15, 1973 price issues) would only affect a Gulf's permissible product prices by a maximum of $11 million.

Also significant in ERA's consideration of this tentative settlement was Gulf's previous efforts directed at compensating for errors it may have made in its pricing of refined products. First, in response to concern brought to Gulf's attention during the course of ERA's audit, Gulf voluntarily implemented approximately $30 million of refunds and credits to its customers. Second, in 1979, Gulf agreed to pay $42.25 million in settlement on a $78 million crude cost issue. That sum is currently the subject of distribution proceedings initiated by OHA pursuant to 10 CFR Part 205, Subpart V, in OHA case number DFF-0001.

The $135 million represents the maximum recovery, absent interest, that ERA anticipates the government would obtain if *all* issues resolved by this settlement were adjudicated in its favor. The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from Gulf was a signficant consideration in ERA's preliminary determination that Gulf's agreement to pay $142 million is in the public interest. Furthermore, that analysis presupposes that the government will prevail in litigating all other disputes. It is also important to note that successful prosecution of the great majority of the enforcement issues would result only in reductions of Gulf's available cost banks in particular time periods. This, in turn, would require only bookkeeping adjustments in Gulf's records, particularly for those periods in which Gulf did not recover all of its costs. In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the necessity in a settlement for both sides to make reasonable compromises of their most optimistic assessments. Based on all of these considerations, ERA concludes that the resolution of these matters for $142 million—an amount exceeding Gulf's maximum overcharge liability—is an appropriate settlement.

IV. Terms and Conditions of the Consent Order

Pursuant to the terms of the proposed Consent Order, within thirty days of the effective date of the Consent Order Gulf will pay DOE $142 million, plus interest computed from the date the document was executed through the date of actual payment. If the settlement is not made final within 120 days of its execution date (January 30, 1985), Gulf may withdraw from the proposed agreement.

If the Consent Order is made final, Gulf's obligation to pay $142 million, plus interest, will be satisfied by the transfer of that amount to DOE within thirty days. DOE will deposit the entire amount in an interest-bearing escrow account maintained for DOE by the Department of Treasury. Promptly thereafter, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Gulf provide necessary information to OHA.

Unless specifically excluded, Gulf and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Gulf, or of Gulf or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) the issues or claims now pending or related to those in *Howard Stout and Gulf Oil Corp.* v. *Dept. of Energy, et al.*, No. 78-1513 (D. Kan.), consolidated in *In*

Re The Department of Energy Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.) (The issues and claims excluded from the Consent Order also include those matters covered by the "Stipulation Staying Certain Portions of the Proposed Remedial Order," dated October 25, 1983, before OHA in Case No. DRO-0194.);

(b) the issues or claims pending or arising out of the matter now before the courts in *Exxon, et al.* v. *Dept. of Energy* (D. Del.) and before OHA in *In Re Three Forty One (341) Tract Unit of the Citronelle Field*, OHA Case No. BEN-0078, *et al.*, except that Gulf's liability, if any, will be limited to $6.7 million and implementation of any OHA Order will be consistent with DOE and court decisions related to the termination of the entitlements program;

(c) the issues or claims pending or arising out of the subject matter of the ERA's Notice of Final Decision, Notice of Public Proceeding and Public Hearing with respect to January 1981 and Entitlements Adjustments Notices (49 FR 27410 (July 3, 1984)) including without limitation the subject matter of ERA's request therein for additional comments;

(d) Gulf's rights or obligations concerning claims under 10 CFR Part 205, Subpart V;

(e) Gulf's rights, if any, under the Consent Order between DOE and Standard Oil Company (45 FR 26747 (April 21, 1980)) and Gulf's rights, if any, in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co.*, No. CA-84-1432 (S.D Ohio);

(f) Gulf's obligation to respond to a subpoena issued at the request of DOE for documents of Cities Service Corporation in the possession of Gulf, which is now before the courts in *United States* v. *Gulf Oil Corp.*, No. CA H-84-553 (S.D. Tex.), appeal pending, Dkt. No. 5-108 (Temp. Emer. Ct. App.); and

(g) the remaining issues or claims pending or arising out of the subject matter now before the courts in *Stertz*, v. *Gulf Oil Corp.*, No. 78C1813 (E.D. N.Y.), and related appeals.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Gulf.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litigated by Gulf and DOE. This involves administrative and judicial litigation and includes the following cases:

Administrative Litigation

Office of Hearings and Appeals: BRO-0211, DRO-0194, HRO-0156, HRO-0157, HRO-0158, HRO-0159, HRO-0168, HRO-0171, HRO-0172, HRO-0173

Federal Energy Regulatory Commission: RO-84-6-000, RA-83-2-000

Judicial Litigation

United States v. *Gulf Oil Corp.*, No. 790027 (D.D.C.)

Gulf Oil Corp. v. *Dept. of Energy*, No. CA79-CV-11 (N.D. N.Y.)

Gulf Oil Corp. v. *Dept. of Energy*, No. H-82-3224 (S.D. Texas)

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear at a public hearing beginning at 10:00 a.m. on April 18, 1985. All comments received within 30 days of the publication of this Notice, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modification of the proposed Consent Order which significantly alters its terms or impact will be published for additional comment. If, after considering the comments it has received, and the comments at the hearing, the DOE determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, D.C., on March 1, 1985.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Department of Energy, Office of Special Counsel

[Case No. RGFA00001]

Consent order with Gulf Oil Corporation.

I. Introduction

101. This Consent Order is entered into between Gulf Oil Corporation ("Gulf") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between DOE and Gulf, its subsidiaries and affiliates, relating to Gulf's compliance with the federal petroleum price and allocation regulations administered and enforced by DOE and its predecessor agencies during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. § 7136. In Delegation No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204-4A, the Administrator delegated to the Special Counsel authority to audit the compliance of certain refiners, including Gulf, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stablization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and

subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Gulf" shall include (without limitation) the Gulf Oil Corporation, its parent Gulf Corporation, as well as its affiliates and subsidiaries; predecessors; its petroleum-related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for Article IV, *infra*, directors, and employees of Gulf. Notwithstanding the foregoing, references in this Consent Order to "Gulf" shall exclude Chevron Corporation, and its subsidiaries (other than Gulf), and affiliates, other than with respect to their derivative liability, if any, for the acts of Gulf under the federal petroleum price and allocation regulations.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. Gulf is a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and is subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Gulf engaged in, among other things, the production; importation, sale, and refining of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products; and the extraction, fractionation, and sale of natural gas liquids ("NGLs") and natural gas liquid products ("NGLPs").

302. In 1973, the DOE began an audit to determine Gulf's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed review of Gulf's policies and procedures pertaining to, and Gulf's compliance with, specific federal petroleum price and allocation regulations.

303. As part of its audit, DOE examined Gulf's books and records relating to Gulf's compliance with the federal petroleum price and allocation regulations and the reporting requirements incidental to those regulations. In addition, at DOE's request, Gulf prepared and submitted to the auditors a substantial number of specific responses to audit inquires not necessarily limited to, or readily available from, individual books or records.

304. During the course of its audit, as well as the negotiations that led to this Consent Order, OSC raised certain issues with respect to Gulf's application of the federal petroleum price and allocation regulations. OSC has taken various administrative enforcement actions against Gulf, including the issuance of letters, Notices of Probable Violation, Notices of Proposed Disallowance, Proposed Remedial Orders, and a Proposed Order of Disallowance and filed a judicial enforcement action. Gulf maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. DOE and Gulf disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Gulf's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, Gulf has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

305. Pursuant to a consent order (49 FR 24929 (June 18, 1984)), Gulf has already paid forty-two million two hundred forty thousand dollars ($42,240,000.00) which is now subject to distribution in accordance with Subpart V of 10 CFR Part 205.

306. In the matter now before the courts in *Howard Stout and Gulf Oil Corporation* v. *Department of Energy, et al.*, No. 78-1513 (D.Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) Gulf has already paid at least one hundred seventy-one million dollars ($171 million) into an interest-bearing escrow fund maintained under the authority of the court for ultimate distribution as directed by the court.

307. Pursuant to a prior consent order (45 F.R. 78755 (Nov. 26, 1980)) and negotiations with DOE concerning various matters arising under the federal petroleum price and allocation regulations, Gulf has already paid nearly thirty million dollars ($30 million) in refunds and credit memoranda to its customers.

TERMS AND CONDITIONS

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by DOE for such matters under 10 CFR 205.199I or otherwise, Gulf shall pay one hundred forty-two million dollars ($142,000,000.00), plus interest accruing at the rate specified in paragraph 404 between the date of execution of this Consent Order and the date of payment, pursuant to paragraph 402, to be disbursed as provided in paragraph 403.

402. Gulf agrees to pay one hundred forty-two million dollars ($142,000,000.00) plus interest accrued for the period described in paragraph 401, to DOE within thirty (30) days of the effective date of this Consent Order.

403. OSC and Gulf agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 402.

404. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the day of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interest earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such first quarterly revision or since the immediately preceding quarterly in all other cases shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction

governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned as of 2:00 P.M. Eastern Standard Time.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by DOE against Gulf regarding Gulf's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Proposed Order of Disallowance, Remedial Order, action in court or otherwise are resolved and extinguished as to Gulf by this Consent Order, except that this Consent Order does not cover or affect:

(a) the issues or claims now pending, and those related thereto, in *Howard Stout and Gulf Oil Corporation* v. *Department of Energy, et al.*, No. 78–1513 (D. Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) (The issues and claims excluded from the Consent Order by this paragraph also include those matters covered by the "Stipulation Staying Certain Portions of the Proposed Remedial Order," dated October 25, 1983, before OHA in Case No. DRO–0194.);

(b) the issues or claims pending or arising out of the matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, No. 81–25, *et al.* (D.Del.) and before OHA in *In Re Three Forth One (341) Tract Unit of the Citronelle Field*, OHA Case Nos. BEN–0078, *et al.*, except to the extent provided in paragraph 506;

(c) the issues or claims pending or arising out of the subject matter of the ERA's Notice of Final Decision, Notice of Public Proceeding and Public Hearing with respect to January 1981 and Entitlements Adjustments Notices (49 FR 27410 (July 3, 1984)), including without limitation the subject matter of ERA's request therein for additional comments;

(d) Gulf's rights in all regards concerning claims under 10 CFR Part 205, Subpart, V, or claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations;

(e) Gulf's rights, if any, under the consent order between DOE and Standard Oil Company (Indiana) (45 FR 26747 (April 21, 1980)) and related agreements between DOE and Standard Oil Company (Indiana) and Gulf's rights, if any, in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Company, et al.*, v. *U.S. Department of Energy, et al.*, No. C2–84–1432 (S.D. Ohio);

(f) Gulf's obligation to respond to a subpoena issued at the request of DOE for documents of Cities Service Corporation in the possession of Gulf, said issue being now before the courts in *United States of America* v. *Gulf Oil Corporation*, No. CA H–84–553 (S.D.Tex.), appeal pending, Dkt. No. 5–108 (TECA); and,

(g) the remaining issues or claims pending or arising out of the subject matter now before the courts in *Stertz, et al.* v. *Gulf Oil Corporation* v. *Department of Energy*, No. 78C1813 (E.D.N.Y.) and related appeals.

502. (a) Compliance by Gulf with this Consent Order shall be deemed by DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Gulf, except as to those matters excluded by pargraph 501, DOE hereby releases Gulf completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action, specifically including claims for civil penalties, that DOE has asserted or may otherwise be able to assert against Gulf for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil matter against Gulf or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Gulf or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Gulf has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Gulf in derogation of this Consent Order.

(b) Nothing contained herein shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Gulf for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Gulf is a working or royalty interest owner in such crude oil production. However, if Gulf was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, DOE shall not initiate or prosecute any enforcement action against any party for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. Gulf and DOE agree that the amount paid to DOE pursuant to this agreement is not attributable to Gulf's activities as a working or royalty interest owner on properties on which it is not the operator. Furthermore, Gulf and DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties at times during which Gulf is a working or royalty interest owner (and not the operator) or affect any rights or obligations between Gulf and such working or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, DOE agrees that this Consent Order settles and finally resolves all aspects of Gulf's liability to DOE under the federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from Gulf, or against any civil action brought by an agency of the United States other than by DOE under (i) Section 210 of the Economic Stabilization Act of (ii) any statute or regulation other than the

federal petroleum price and allocation regulations. Finally, this Consent Order does not affect or prejudice any private action brought by a third party against Gulf, or by Gulf against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Gulf, or the rights of Gulf to seek contribution from third parties.

(d) Gulf expressly agrees that in consideration for DOE's performance under the Consent Order, Gulf releases DOE completely and for all pruposes from all administrative and civil judicial claims, liabilities or causes of action that Gulf has asserted or may otherwise be able to assert against DOE under the federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order.

503. Gulf and DOE agree to stipulate to the dismissal with prejudice of *Gulf Oil Corporation* v. *Department of Energy*, No. CA79-CV-11 (N.D.N.Y.). Within fifteen (15) days after the effective date of this Consent Order, Gulf will execute and deliver to DOE a stipulation in the form attached hereto as Attachment A.

504. Gulf and DOE agree to stipulate to the dismissal with prejudice of *United States of America* v. *Gulf Oil Corp.*, No. 79-0030 (D.D.C.). Within fifteen (15) days after the effective date of this Consent Order, DOE will execute and deliver to Gulf a stipulation in the form attached hereto as Attachment B.

505. Gulf agrees to file a motion to dismiss with prejudice as to DOE in *Gulf Oil Corporation* v. *U.S. Dept. of Energy, et al.*, No. H-82-3224 (S.D. Texas) within fifteen (15) days after the effective date of this Consent Order.

506. Gulf and DOE agree that any existing or future order requiring Gulf to refund or otherwise pay money or other consideration as a result of proceedings or decisions arising from the peititon for exception relief filed by the Three Forty One (341) Tract Unit of the Citronelle Field, including those cases and decisions referenced by the following citations (OHA Case No. BEN-0078, (7 DOE ¶ 81,140); DEE-7746, HED-0079, (10 DOE ¶ 81,027); and BEX-0180, (9 DOE ¶ 82,509) shall not exceed $6.7 million, plus interest, if any. Implementation of any OHA order respecting Gulf's obligations arising from these proceedings will be consistent with DOE and court decisions respecting the termination of the entitlements program (49 FR 27410, July 3, 1984, and (50 FR 1919, January 14, 1985).

507. Within thirty (30) days after the effective date of this Consent Order, DOE and Gulf will file or cause to be filed appropriate pleadings to dismiss with prejudice all proceedings against Gulf or commenced by Gulf covered by this Consent Order then pending before DOE's OHA or on appeal from OHA to the Federal Energy Regulatory Commission, except that in Case No. DRO-0194 the issues and claims excluded by paragraph 501(a), *supra*, will be dismissed without prejudice.

508. Execution of this Consent Order constitutes neither an admission by Gulf nor a finding by DOE of any violation by Gulf or any statute or regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Gulf pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures. Payments made by Gulf pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order.

509. Nothwithstanding any other provision herein, with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding or to seek approriate penalties for any newly discoverd regulatory violations committed by Gulf, if Gulf has knowingly concealed facts relating to such violations. DOE and Gulf also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of material fact during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601. Pursuant to 10 CFR 210.92(d) and 10 CFR 210.1, Gulf is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters resolved by this Consent Order. Gulf shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. Except for the matters excluded in paragraph 501, Gulf will not be subject hereafter to any report order, subpoenas, or other administrative discovery by DOE or a successor relating to Gulf's compliance with the federal petroleum price and allocation regulations for the period covered by this Consent Order; provided, however, that Gulf will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to the federal petroleum price and allocation regulations. Gulf shall continue to be subject to DOE's information gathering and reporting authority.

602. DOE will treat the sensitive commercial and financial information of Gulf as confidential and proprietary and will not disclose such information unless required to do so by law including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, DOE will claim any privilege or exemption reasonably available to it. DOE will provide Gulf with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. DOE will retain the audit information which it has acquired during its review of Gulf's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of the Consent Order, DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by DOJ, DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Gulf may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Gulf and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Gulf (and its successors and assigns) and DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will

undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which DOE is named as a party. Gulf agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Gulf hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in the **Federal Register**. Prior to that date, DOE will publish notice of the proposed Consent Order in the **Federal Register** and, in that notice, will provide not less than thirty (30) days for members of the public to submit comments to DOE and to appear at a hearing conducted by ERA. DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to Gulf, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Gulf, Gulf reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Gulf, hereby agree to and accept on behalf of Gulf the foregoing Consent Order.

Gulf Oil Corporation.

C.H. Bowman.

Dated: January 30, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Dated: January 30, 1985.

In the United States District Court for the Northern District of New York

[Civil Action No. CA79-CV-11]

Gulf Oil Corporation Plaintiff, *v. Department of Energy*, Defendant.

Stipulation of Dismissal

Plaintiff, Gulf Oil Corporation, and defendant, the Department of Energy ("DOE"), hereby stipulate as follows:

1. Gulf and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Gulf and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Gulf Oil Corporation.

By: _____

Attorneys for Plaintiff

United States Department of Energy.

By: _____

Attorneys for Defendant.

This ____ day of _____, 1984, the foregoing Stipulation is approved, and It is so ordered.

_____

United States District Judge.

Attachment B

In The United States District Court for the District of Columbia

[Civil Action No. 79-0030]

United States of America Plaintiff, v. *Gulf Oil Corporation*, Defendant.

Stipulation of Dismissal

Plaintiff, United States of America and the defendant, Gulf Oil Corporation, hereby stipulate as follows:

1. Gulf and the U.S. Department of Energy have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Gulf and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

United States of America.

By: _____

Attorneys for Plaintiff.

Gulf Oil Corporation.

By: _____

Attorneys for Defendant.

This ____ day of _____, 1984, the forefoing Stipulation is approved and It is so ordered.

_____

United States District Judge.

[FR Doc. 85-5586 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP82-75-004]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Compliance Filing

March 1, 1985.

Take notice that on February 19, 1985, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arlka) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule G-2 and Original Volume No. 3, Rate Schedule X-26 to comply with Article II of the Stipulation and Agreement accepted by the Commission on February 17, 1983 and Commission Opinion No. 160-A, issued April 6, 1983. Arkla states that these proposed revised tariff sheets are being filed only to be effective in accordance with their terms during the locked-in period from June 1, 1982 through January 31, 1985.

Arkla requests that it be permitted to withdraw its previous compliance filing of May 26, 1983, or alternatively, that the Commission reject that filing as not being in compliance with the Commission's order approving the Stipulation and Agreement, because those proposed tariff sheets were based on calculations that contained an error.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5533 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7704-001]

Enumclaw/Washington Associates; Surrender of Preliminary Permit

March 5, 1985.

Take notice that Enumclaw/Washington Associates, Permittee for the Enumclaw/Washington Project No. 7704, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7704 was issued on August 8, 1984, and would have expired on January 31, 1986. The project would have been located on the White River in King and Pierce Counties, Washington.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No 7704 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5536 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1250]

City of Pasadena, California, Water and Power Department; Issuance of Annual License

March 5, 1985.

On May 29, 1984, the Water and Power Department of the City of Pasadena, California (City), Licensee for the Azusa Project No. 1250, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder. Project No. 1250 is located on the San Gabriel River in Los Angeles County, California.

The license for Project No. 1250 was issued for a period ending May 30, 1984. In order to authorize the continued operation and maintenance of the project, pending Commission action on the Licensee's application, it is appropriate and in the public interest to issue an annual license to the City.

Take notice that an annual license was issued to the City of Pasadena, California for a period effective May 31, 1984, to May 30, 1985, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Project No. 1250, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before May 30, 1985, a new annual license will be issued each year thereafter, effective May 31 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5537 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. 8007-001]

Franklin Associates; Surrender of Preliminary Permit

March 5, 1985.

Take notice that Franklin Associates, Permittee for the proposed Franklin Falls Project No. 8007, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1984, and would have expired on July 31, 1986. The project would have been located on the Pemigewasset River in Merrimack and Belknap Counties, New Hampshire. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 8007 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5538 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7629-001]

Independence Electric Corp.; Surrender of Preliminary Permit

March 5, 1985.

Take notice that Independence Electric Corporation, Permittee for the proposed Beaver Creek Project No. 7629, requested by letter dated January 18, 1985, that its preliminary permit be terminated. The preliminary permit was issued on March 12, 1984 and would have expired on February 28, 1987. The project would have been located on the Holston River in Grainger and Jefferson Counties, Tennessee.

The Permittee filed the request on January 28, 1985, and the preliminary permit for Project No. 7629 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5539 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-9-000]

Little America Refining Co.; Permitting Supplemental Filing

March 1, 1985.

On March 7, 1984, the presiding officer issued a proposed order [1] affirming the Supplemental Decision and Order of the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued to Little America Refining Company (LARCO).[2] That order reflected a retrospective year-end review of exception relief previously granted on a conditional basis for LARCO's fiscal year ending June 30, 1978. The decision found that LARCO had received excessive relief and ordered LARCO to reimburse the entitlements program. Comments on the proposed order were filed by LARCO.

On June 28, 1984, DOE announced its final decision not to issue any further entitlements notices, and its tentative decision not to require firms which had received excessive entitlements exception relief to refund that relief.[3]

[1] 26 FERC ¶ 62,209.

[2] 9 DOE ¶ 85,502 (1981).

[3] 49 FR 27,410 (July 3, 1984).

This proceeding was then stayed until DOE announced its final decision. On January 9, 1985, DOE announced its final decision not to enforce orders requiring firms to refund excessive relief.[4] DOE held that effectuation of such orders in today's unregulated petroleum market would be inconsistent with the purpose of these orders and of the Emergency Petroleum Allocation Act (EPAA).[5]

It appears that these actions by DOE may have rendered moot this proceeding. By March 11, 1985, any participant who believes that DOE's actions have not rendered moot this proceeding shall file a response explaining in detail its position. Failure to file a response will be deemed an admission that this proceeding is moot and should be dismissed.

Kenneth Plumb,

Secretary.

[FR Doc. 85-5540 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-88-001, et al.]

Transwestern Pipeline Co., et al., Filing of Pipeline Refund Reports and Refund Plans

March 4, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 13, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing*
Feb. 15, 1985	Transwestern Pipeline Co	RP84-88-001	
Do	Mountain Fuel Resources, Inc	RP85-73-000	
Feb. 14, 1985	West Lake Arthur Corp	RP85-74-000	
Feb. 15, 1985	Florida Gas Transmission Co	RP85-75-000	
Do	Lone Star Gas Co	RP85-76-000	
Do	Trunkline Gas Co	RP85-77-000	
Do	Transcontinental Gas Pipe Line Corp	RP85-78-000	
Do	Texas Gas Pipe Line Corp	RP85-79-000	
Feb. 19, 1985	Mississippi River Transmission Corp	RP85-80-000	
Feb. 15, 1985	Northwest Central Pipeline Corp	RP85-81-000	
Do	Mid Louisiana Gas Co	RP85-82-000	
Do	Northwest Pipeline Corp	RP85-83-000	
Do	Texas Gas Transmission Corp	RP85-84-000	
Do	Texas Eastern Transmission Corp	RP85-85-000	
Do	Valero Interstate Transmission Co	RP85-86-000	
Do	Consolidated Gas Transmission Corp	RP85-87-000	
Do	ANR Pipeline Co	RP85-88-000	
Do	Sea Robin Pipeline Co	RP85-89-000	
Do	United Gas Pipe Line Co	RP85-90-000	
Do	Columbia Gas Transmission Co	RP85-91-000	
Do	El Paso Natural Gas Co	RP85-92-000	
Do	National Fuel Gas Supply Corp	RP85-93-000	
Do	Tennessee Gas Pipe Line Co	RP85-94-000	
Do	Colorado Interstate Gas Co	RP85-95-000	
Do	Panhandle Eastern Pipe Line Co	RP85-96-000	
Feb. 19, 1985	Montana-Dakota Utilities Co	RP85-97-000	
Do	K N Energy, Inc	RP85-98-000	
Do	Natural Gas Pipe Line Co of America	RP85-99-000	
Do	Cimarron Transmission Co	RP85-100-000	
Feb. 15, 1985	Valley Gas Transmission, Inc	RP85-104-000	
Do	Arkansas Oklahoma Gas Corp	RP85-105-000	

* Refunds Resulting From Btu Measurement Adjustments.

Note.—Each Company will retain its basic Docket No. and will be assigned sub-docket numbers as appropriate.

[FR Doc. 85-5541 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59706; FRL-2791-8]

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 four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-24 and 85-25—March 14, 1985.

Y 85-26—March 18, 1985.

Y 85-27—March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St.,

[4] 50 FR 1919, 1922 (January 14, 1985).

[5] 15 U.S.C. 751 *et seq.* (1982).

SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption 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 85-24

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Industrial low shrink additive for unsaturated polyester sheet molding compounds. Prod. range: 56,000-141,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-25

Manufacturer. Confidential.
Chemical. (G) Polyester from poly(alkylene ether)glycol and methylene bis(isocyanatobenzene).
Use/Production. (G) Coating or film. Prod. range: Confidential.
Toxicity Data. No data on the PMN subtance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85-26

Manufacturer. C. J. Osborn Chemicals, Inc.
Chemical. (G) Alkyd copolymer.
Use/Production. (S) Industrial and consumer clear and pigmented coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release.

Y 85-27

Manufacturer. Ionics, Incorporated.
Chemical. (G) A functional methacrylate polymer.
Use/Production. (S) Industrial and commercial permselective anion membrane used in electrodialysis apparatus in a contained manner for water demineralization.
Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-5575 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51561; FRL-27922]

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 fifty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-558, 85-559, 85-560, 85-561, 85-562, 85-563, 85-564, 85-565 and 85-566—May 22, 1985.

P 85-567—May 25, 1985.

P 85-568, 85-569, 85-570, 85-571, 85-572, 85-573, 85-574, 85-575, 85-576, 85-577, 85-578, 85-579, 85-580, 85-581, 85-582, and 85-583—May 26, 1985.

P 85-584, 85-585, 85-586, 85-587, 85-588, 85-589, 85-590, 85-591, 85-592, 85-593 and 85-594—May 27, 1985.

P 85-595, 85-596, 85-597, 85-598, 85-599, 85-600, 85-601, 85-602, 85-603, 85-604, 85-605, 85-606, 85-607, 85-608, 85-609, 86-610, 85-611, 85-612 and 85-620—May 28, 1985.

Written comments by:

P 85-558, 85-559, 85-560, 85-561, 85-562, 85-563, 85-564, 85-565 and 85-566—April 22, 1985.

P 85-567—April 25, 1985.

P 85-568, 85-569, 85-570, 85-571, 85-572, 85-573, 85-574, 85-575, 85-576, 85-577, 85-578, 85-579, 85-580, 85-581, 85-582 and 85-583—April 26, 1985.

P 85-584, 85-585, 85-586, 85-587, 85-588, 85-589, 85-590, 85-591, 85-592, 85-593 and 85-594—April 27, 1985.

P 85-595, 85-596, 85-597, 85-598, 85-599, 58-600, 85-601, 85-602, 85-603, 85-604, 85-605, 85-606, 85-607, 85-608, 58-609, 86-610, 85-611, 85-612 and 85-620—April 28, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51561]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., 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 St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (Polymer Exemption). 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.

P 85-558

Manufacturer. Confidential.
Chemical. (G) Waterborne urethane-acrylic polymer.
Use/Production. (S) Industrial and commercial general purpose coating and modifier for coating and inks. Prod. range: 50,000-300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release to the environment.

P 85-559

Importer. Confidential.
Chemical. (G) Alkyl calixaryl acetate.
Use/Import. (G) A formulation component for open, non-dispersive use. Import range: 1,000-5,000 kg/yr.
Toxicity Data. No data submitted.

Exposure. Processing and use: Dermal, a total of 8 workers.
Environmental Release/Disposal. 0.01 to 2 kg/batch released to land. Disposal by landfill.

P 85-560

Manufacturer. Confidential.
Chemical. (G) Substituted olefinic ketone.
Use/Production. (G) Destructive end use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85-561

Manufacturer. Confidential.
Chemical. (G) Substituted olefinic alcohol.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Irritation: Eye-Non-irritant; Ames Test: Non-mutagenic; Maximization Test: Non-allergic: Phototoxicity test: Non-photoxic: Photoallergenicity test: Non-photosensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-562

Manufacturer. Allied Corporation.
Chemical. (G) Alkanolalkane triacrylate octylamine adduct.
Use/Production. (S) Binder component for coated abrasive manufacturing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da.
Environmental Release/Disposal. No release.

P 85-563

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester polymer composed of fumarated rosin, glycerine, diethylene glycol and a polyhydroxyl prepolymer.
Use/Production. (S) Printing ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 3 hrs/da, up to 35 da/yr.
Environmental Release/Disposal. 40 kg/batch released to air. Disposal by incineration.

P 85-564

Manufacturer. Confidential.
Chemical. (S) Polymer of hydroxyethyl acrylate, 4,4'-diphenylmethyane diisocyanate and polymethlene polyphenyl isocyanate.
Use/Production. (S) Industrial laminating resin for FRP. Prod. range: 127,120-544,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 5 hrs/da.
Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill.

P 85-565

Manufacturer. Confidential.
Chemical. (G) Organo sulfonic acid, zinc salt.
Use/Production. (G) A catalyst used in the polymerization of organic molecule. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 1-2 hrs/da.
Environmental Release/Disposal. 25 kg/da released.

P 85-566

Manufacturer. Confidential.
Chemical. (G) Alcohol ether sulfate, amine salt.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 1-2 hrs/da.
Environmental Release/Disposal. 25 kg/da released.

P 85-567

Manufacturer. Dow Corning Corporation.
Chemical. (G) Silyl ketene acetal.
Use/Production. (G) Polymerization initiator. Prod. range: Confidential.
Toxicity Data. Acute oral: 4,580 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin-Slight, Eye-Non-irritant; Ames Test: Negative.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 560 kg released. Disposal by incineration.

P 85-568

Manufacturer. Confidential.
Chemical. (G) Difunctional ester.
Use/Production. (S) Site-limited resin intermediate. Prod. range: 50,000-222,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 41 workers, up to 8 hrs/da, up to 35 da/yr.
Environmental Release/Disposal. 11 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85-569

Manufacturer. Confidential.
Chemical. (G) Styrene/acrylate/methacrylate polymer.
Use/Production. (G) Industrial coating. Prod. range: 170,000-510,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 35 workers, up to 8 hrs/da, up to 82 da/yr.
Environmental Release/Disposal. 15 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85-570

Importer. Confidential.
Chemical. (G) Ester of olefinic acid.
Use/Import. (G) Highly dispersive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-571

Importer. Confidential.
Chemical. (G) Ester of olefinic acid.
Use/Import. (G) Highly dispersive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-572

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium montmonillonite.
Use/Production. (S) Industrial thickener for oil-based coatings (paints). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by onsite evaporation/settling pond. Fully contained.

P 85-573

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium hectorite.
Use/Production. (S) Industrial thickener for oil-based coatings (paints). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by onsite evaporation/settling pond. Fully contained.

P 85-574

Manufacturer. Confidential.
Chemical. Substituted benzocyazolethylidine.
Use/Production. (G) Dye in coated article. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 21 workers, up to 8 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Less than 0.008 kg/batch released to land. Less than 0.002 to less than 0.01 kg/batch incinerated.

P 85-575

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Substituted bisbenzophenone.

Use/Production. (G) Polymer stabilizer. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 18 workers, up to 8 hrs/da, up to 8 da/yr, 14 persons/batch.

Environmental Release/Disposal. 2 to 145 kg/batch released with less than 0.5 kg/batch to land. Disposal by incineration and landfill.

P 85-576

Manufacturer. Confidential.

Chemical. (S) Polymer of phthalic anhydride 2,2,4-trimethyl-1,3-pentanediol 2,2'-oxybis(ethanol) fascat 4100.

Use/Production. (S) Site-limited and industrial polymer for general metal finishing. Prod. range: 400,000-600,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 40 workers, up to 4 hrs/da, up to 36 da/yr.

Environmental Release/Disposal. .5 to 40 kg/da released to air and/or land. Disposal by incineration or sanitary landfill.

P 85-577

Manufacturer. Confidential.

Chemical. (S) Polymer of 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, hexanediolic acid, 2,2'-oxybis(ethanol) 2,2-dimethyl-1,3-propanediol 2,2,4-trimethyl-1,3-pentanediol.

Use/Production. (S) Industrial polymer for coil coating enamel. Prod. range: 740,000-1,480,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 13 workers, up to 2 hrs/da, up to 72 da/yr.

Environmental Release/Disposal. .5 to 40 kg released to air and/or land. Disposal by incineration or sanitary landfill.

P 85-578

Importer. American Hoechst Corporation.

Chemical. (G) Substituted stilbene.

Use/Import. (S) Polymerization initiator for printing plates. Import range: 10 kg/yr.

Toxicity Data. Acute oral (Male/female): > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Processing: A total of 2 workers, up to 0.25 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. .5 kg incinerated.

P 85-579

Manufacturer. Allied Corporation.

Chemical. (G) Sulfonated styrene-containing polymer.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85-580

Manufacturer. Allied Corporation.

Chemical. (G) Sulfonated styrene-containing polymer.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85-581

Manufacturer. Allied Corporation.

Chemical. (G) Chlorine-containing styrene copolymer.

Use/Production. (G) Reactant in preparing ion exchangers. Prod. range: Confidential.

Toxicity Data. Acute oral: > 4.0 g/kg; Irritation: Skin—Negligible.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85-582

Manufacturer. Allied Corporation.

Chemical. (G) Styrene containing ion exchange material.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. Acute oral: > 2.0 g/kg; Irritation: Skin—Negligible.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85-583

Manufacturer. Allied Corporation.

Chemical. (G) Chlorosulfonated polystyrene.

Use/Production. (S) Site-limited process intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > 4 g/kg; Irritation: Skin—Mild.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-584

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylate-acrylonitrile, salt.

Use/Production. (S) Industrial size for cellulosic fibers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Disposal by POTW.

P 85-585

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Site-limited resin intermediate. Prod. range: 925,000-1,113,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 52 workers, up to 8 hrs/da, up to 148 da/yr.

Environmental Release/Disposal. 6 to 100 kg/batch released to land. Disposal by incineration and landfill.

P 85-586

Manufacturer. Confidential.

Chemical. (G) Functionally modified acrylic system.

Use/Production. (G) Industrial coating resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 50 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 5 to 120 kg/batch released to land. Disposal by incineration and landfill.

P 85-587

Manufacturer. Confidential.

Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.

Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-588

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-589

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-590

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-591

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-592

Manufacturer. Confidential.
Chemical. (G) Heterocyclic substituted butane.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-593

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyamine ion exchange resin.
Use/Production. (S) Industrial water demineraliztion and metals extraction. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. Less than 1 kg/batch released to water/landfill with less than 1 kg/batch to air or landfill. Disposal by incineration and navigable waterway after treatment behind waterway.

P 85-594

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyamine ion exhange resin.
Use/Production. (S) Industrial water demineralization and metals extraction. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. Less than 1 kg/batch released to water/landfill with less than 1 kg/batch to air or landfill. Disposal by incineration and navigable waterway after treatment behind waterway.

P 85-595

Manufacturer. Confidential.
Chemical. (G) Emulsion tetrapolymer.
Use/Production. (G) Component of manufactured consumer article—contained use. Prod. range: 5,000–25,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 10 workers, up to 4 hrs/da, up to 11 da/yr.
Environmental Release/Disposal. No release.

P 85-596

Manufacturer. Confidential.
Chemical. (G) 1-Substituted-3-alkylheteromonocyclic-4-hydroxybenzene.
Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 80 da/yr.
Environmental Release/Disposal. 9.0 kg/batch released to water.

P 85-597

Manufacturer. Confidential.
Chemical. (G) 3-Alkylheteromonocyclic-4-hydroxy-1-substitutedbenzene.
Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Skin sensitization: Mild sensitizer.
Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 50 da/yr.
Environmental Release/Disposal. 1.0 kg/batch released to water. Disposal by POTW.

P 85-598

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 5.0 g/kg: Irritation: Skin—Slight, Eye—Irritant but non-corrosive; Ames Test: Not mutagenic.
Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85-599

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 50.0 g/kg: Irritation: Skin-Slight, Eye-Irritant but non-corrosive; Ames Test: Not mutagenic.
Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85-600

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 50.0 g/kg: Irritation: Skin-Slight, Eye-Irritant but non-corrosive; Ames Test: Not mutagenic.

Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85-601

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenol.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000-10,000 kg/yr.

Toxicity Data. Acute oral: Males-5.2 g/kg, Females-3.5 g/kg, Combined-4.4 g/kg; Irritation: Skin-Irritant, Eye-Corrosive; Ames Test: Not mutagenic.

Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. 10 kg/batch released to air and water. Disposal by POTW and incineration.

P 85-602

Manufacturer. Confidential.

Chemical. (G) 2,4-Diheteromonocyclic phenol.

Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 2,000-10,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 12 workers, up to 1 hr/da, up to 70 da/yr.

Environmental Release/Disposal. Less than 0.3 to less than 1.0 kg/batch released to water. Disposal by POTW and incineration.

P 85-603

Manufacturer. Confidential.

Chemical. (G) (3-Alkylheteromonocyclic-4-hydroxyphenylsubstituted)3'-substituted-4'-hydroxyphenylsubstituted)alkyl.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000-20,000 kg/yr.

Toxicity Data. No data submitted on the PMN substance.

Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 1 kg/batch released to air with trace (0.1 kg) to water and land. Disposal by POTW and incineration.

P 85-604

Manufacturer. Confidential.

Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000-20,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted .

Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 1 hr/da, up to 50 da/yr.

Environmental Release/Disposal. 1.0 to 20 kg/batch released to land.

P 85-605

Manufacturer. Confidential.

Chemical. (G) Trisubstituted phenol.

Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 1,000-5,000 kg/yr.

Toxicity Data. Skin sensitization: Extreme sensitizer.

Exposure. Manufacture and processing: Dermal, a total of 10 workers, up to 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. 4 kg/batch released to air, with less than 0.1 kg to 2.5 kg/batch to water and 5.0 kg/batch to land. Disposal by POTW and incineration.

P 85-606

Manufacturer. Confidential.

Chemical. (G) (3-Alkylheteromonocyclic-4-hydroxyphenyl-substituted) (3'-substituted-4'-hydroxyphenylsubstituted)alkyl.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000-20,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. .1% to 1 kg/batch released to air with .1% to .1 kg/batch to water and 0.2 to 1 kg/batch to land. Disposal by POTW and incineration.

P 85-607

Manufacturer. Confidential.

Chemical. (G) 2-Alkylheteromonocyclic-4-substitutedphenol.

Use/Production. (S) (Industrial intermediate. Prod. range: 5,000-20,000 kg/yr.

Toxicity Data. Skin sensitization: Moderate.

Exposure. Manufacture and processing: Dermal, a total of 2 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. A very small trace to 0.5 kg/batch released to air with 1.0 kg/batch to water and a very small trace to .05 Kg/batch to land. Disposal by POTW and incineration.

P 85-608

Manufacturer. Confidential.

Chemical. (S) Polymer of hydroxy ethyl acrylate, Desmodur W, Jeffamine D 230, Teracol 650 and Dianol.

Use/Production. (G) Closed system. Prod. range: 2,000-120,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da.

Environmental Release/Disposal. Minimal release to air. Disposal by landfill.

P 85-609

Manufacturer. Confidential.

Chemical. (G) Functionally modified methacrylate polymer.

Use/Production. (G) Resin to be used in industrial coating products. Prod. range: 212,000-248,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 29 workers, up to 8 hrs/da, up to 58 da/yr.

Environmental Release/Disposal. 5 to 104 kg/batch released to land. Disposal by incineration and landfill.

P 85-610

Importer. Confidential.

Chemical. (G) Aryl-alkyl dithioether.

Use/Import (S) An industrial antireversion agent for natural and polyisoprene rubber. Import range: Confidential.

Toxicity Data. Acute oral (Male/female): > 2.86 g/kg; Irritation: Skin—Slight, Eye—Non-Irritant.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85-611

Importer. Confidential.

Chemical. (G) Copper complex of substituted-disazonaphthalenetrisulfonic acid.

Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.

Toxicity Data. Acute oral (Male/female): > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant: IC_{50} 96 hr (Brachydanio rerio): > 100 mg/1.

Exposure. Import and use: Dermal and inhalation, 5 min/weighting, twice/shift.

Environmental Release/Disposal. No release anticipated. Disposal by POTW.

P 85-612

Manufacturer. Confidential.

Chemical. (G) Polymer of substituted aryl olefin.

Use/Production. (G) An additive in the formation of certain polymers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-620

Manufacturer. Confidential.

Chemical. (G) Functionally substituted acrylic/methacrylic/styrene polymer.

Use/Production. (G) Polymer for an industrial used coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: A total of 40 workers, up to 8 hrs/da, up to 70 da/yr.

Environmental Release/Disposal. 4.0 to 105 kg/batch released to land. Disposal by landfill.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-5578 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59186; FRL-2792-1]

Stannous (Tin 2⁺) Methane-Sulfonate; 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 exemption, provides a summary, and request comments on the appropriateness of granting the exemption.

DATE: Written comments by March 25, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59186]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 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: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manfacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-28

Close of Review Period. April 12, 1985.

Manufacturer. CP Chemicals Inc.

Chemical. (S) Stannous (Tin 2⁺) methane-sulfonate.

Use/Production. (S) Customer evaluation as an improvement on other tin salts in electroplating operations. Prod. range: 10,000 lbs/6-12 months.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 25 workers, 40 hrs/wk for 1-4 wks each.

Environmental Release/Disposal. No data submitted.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-5574 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2792-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 19, 1985 through February 22, 1985 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 FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DS-AFS-L61143-00, Rating EC2, Targhee Nat'l Forest Land Mgmt. Plan, ID and WY. SUMMARY: EPA found that many of the insufficiencies of the DEIS remained in the DSEIS. Specific information regarding existing and predicted water quality and air quality violations was requested. Clarification of apparent contradictions in the text was also requested.

ERP No. D-AFS-L61163-OR, Rating EC2, Willamette Pass Alpine Winter Sports Site, Expansion and Development, Master Plan, Deschutes and Willamette Nat'l Forests, OR. SUMMARY: EPA requested more in-depth analyses of predicted effects on air and water quality, fish and wildlife, and vegetation. Information about existing water quality was also requested.

ERP No. D-BLM-K65063-NV, Rating EC2, Esmeralda—Southern Nye Planning Area Resource Mgmt. Plan, NV. SUMMARY: EPA requested clarification of Wilderness Study Area criteria, further analysis of air and water quality issues, and discussion of the use of herbicides for range management.

ERP No. DS-FHW-B40029-VT, Rating EC2, Burlington Southern Connector Construction, I-189/Shelburne Road (US 7) to Battery and King Streets, VT. SUMMARY: EPA believes that the specific design effluent limitations of the onsite groundwater treatment system must be addressed to allow the assessment of impacts on drinking water supplies. EPA recommends that runoff during construction be collected for treatment at the onsite treatment facility, and that the highway drainage system include a permanent holding basin. Finally, EPA requests that additional information be provided in the FSEIS to allow the assessment of wetland impacts, and the evaluation of mitigation for unavoidable wetland losses.

ERP No. D-FHW-G40113-AR, Rating LO, Hot Springs East/West Arterial Construction, US 270 to US 270W, AR. Summary: EPA has not identified any significant environmental impacts requiring changes to the project.

ERP No. D-SCS-D36100-DE, Rating 3, Murderkill River Watershed Protection and Flood Prevention, DE. Summary: EPA stated that the DEIS inadequately

discussed potentially significant water quality and wetland impacts of the proposal. EPA also identified new alternatives not addressed in the EIS. EPA recommended that a supplement to this EIS or a revised DEIS be prepared to address these concerns.

Final EISs

ERP No. F-FHW-F40185-IN, US 12 Realignment and US 12 Bridge Replacement over Trail Creek, Michigan Blvd./US 12 and Pine Street to US 12, IN. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F-NRC-B06004-CT, Millstone Nuclear Power Station, Unit 3, Operating License, Issuance, CT. Summary: EPA's concerns were satisfactorily resolved in the FEIS and the proposed operation of Unit 3 will not cause significant adverse impacts on the environment.

Dated: March 5, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5640 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2792-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 25, 1985 through March 1, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850079, Draft, HUD, PA, Philadelphia Convention Complex Development, CDBG, Center City, Philadelphia County, Due: April 22, 1985, contact: Avrum Kantor (215) 875-3506.

EIS No. 850080, Draft, IBR, SD, Lake Andes-Wagner Unit, Water Resource Project, Pick-Sloan Missouri Basin Program, Charles Mix County, Due: May 29, 1985, Contact: John Lawson (406) 657-6164.

EIS No. 850081, Final, EPA, CA, San Pedro Basin Ocean Dredged Material Disposal Site, Designation, Long Beach Harbor, Due: April 8, 1985, Contact: Frank Csulak (202) 755-9231.

EIS No. 850082, DSuppl, AFS, ID, Meadows Unit Land Use Plan, Payette National Forest, Due: April 22, 1985, Contact: Peter Smith (202) 447-3853.

EIS No. 850083, Draft, NOA, REG, Northeast Multi-Species Fishery Management Plan, Adoption, Approval and Implementation, Due: April 22, 1985, Contact: Douglas Marshall (617) 231-0422.

EIS No. 850084, Draft, BLM, CA, Amselco Colosseum Project, Reopening and Expansion, San Bernardino County, Due: April 22, 1985, Contact: Roger Britton (619) 326-3896.

EIS No. 850085, Draft, BIA, NM, Norton-Tesuque 115 kV Overhead Transmission Line and Substation, Right-of-Way Permit and Approval, Santa Fe County, Due: May 8, 1985, Contact: Bruce Blanchard (202) 343-3891.

Dated: March 5, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5641 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 4, 1985.

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.

Copies of these submissions are available from Doris R. Peacock, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB No. 3060-0003
Title: Application for Amateur Radio Station and/or Operator Permit
Form No. FCC 610
Action: Revision
Estimated Annual Burden: 118,751 Responses; 9,856 Hours.

OMB No. 3060-0035
Title: Application for Renewal of Auxiliary Broadcast License (Short Form)
Form No. FCC 313-R
Action: Extension
Estimated Annual Burden: The burden has been temporarily eliminated due to the fact that no filings are scheduled until FY 1988.

OMB No. 3060-0069
Title: Application for Commercial Radio Operator License
Form No. FCC 756
Action: Revision
Estimated Annual Burden: 40,000 Responses; 4,000 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5624 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Mark S. Fowler has appointed the following SES members to the Executive Resources and Performance Review Board:

Edward J. Minkel—Managing Director
Chairman
Robert S. Foosaner—Chief, Private Radio Bureau
Member
Albert Halprin—Chief, Common Carrier Bureau
Member
James C. McKinney—Chief, Mass Media Bureau
Member
Jack D. Smith—General Counsel
Member
Richard M. Smith—Chief, Field Operations Bureau
Member.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5625 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Shirley C. Bumpous and Caprice Ford; Hearing Designation Order

In re applications of:

Shirley C. Bumpous, Wasilla, Alaska; Req: 1360 kHz, 5 kW, U.	MM Docket No. 85-42, file No. BP-840104AD.
Caprice E. Ford, Wasilla, Alaska; Req: 1360 kHz, 5 kW, U.	File No. BP-840702AG.

For Construction Permit.

Adopted: February 15, 1985.
Released: March 1, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Shirley C. Bumpous and Caprice E. Ford.

2. *Caprice E. Ford.* While this applicant checked the "Individual" box in response to Question 1, Section II of FCC Form 301, the title in the signature

portion (Section VII) of the application indicates "General Partner-Owner." This discrepancy should be clarified by amendment.

3. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, That Caprice E. Ford shall submit the amendment specified in paragraph 2 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

6. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

7. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-5626 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

790 Communications; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. 790 Communications—WTNY, a partnership; Watertown, NY.	BPH-830625AG	85-45
B. Thomas Gramuglia; Watertown, NY.	BPH-840217AK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-5627 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Salina Broadcasting Co. and Melinda W. Sittre; Construction Permit; Hearing Designation Order

In re applications of:

Salina Broadcasting Co., Salina, Utah; Req: 1490 kHz, 0.25 kW, 1 kW-LS, U.	MM Docket No. 85-44; file No. BP-840302AC.
Melinda W. Sittre, Salina, Utah; Req: 1490 kHz, 0.25 kW, 1 kW-LS, U.	File No. BP-840723AH.

For Construction Permit.

Adopted: February 15, 1985.

Released: March 5, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Salina Broadcasting Co., and Melinda W. Sittre.

2. *Salina Broadcasting Co.* While this applicant answered "No" to Question 10, section V-A of FCC Form 301, indicating non-compliance with § 73.24(g)[1] of the Commission's Rules, its technical showing cites the lack of a substantial residential population within the 1V/m contour as a basis for the selection of the proposed transmitter site. Population figures were not included in this showing. This discrepancy should be clarified by amendment. If, upon receipt of the amendment the non-compliance still exists, an issue should be specified by the Administrative Law Judge to determine whether waiver of the Rule is warranted.

3. *Melinda W. Sittre.* Ms. Sittre is presently associated with stations KSVC/KKWZ-FM, Richfield, Utah, as Vice President-Account Executive. The 1 mV/m contour of the present proposal is totally encompassed by the 1 mV/m contour of KSVC, in violation of § 73.3555(a)[2] (multiple ownership) of the Commission's Rules. Therefore, Ms. Sittre will be required to sever all connection with this station prior to program test authority should this application be granted. However, no statement of intent has been filed. An amendment will be required.

4. In addition, Ms. Sittre failed to submit photographs of the transmitter site as required by Question 8, section

[1] Section 73.24(g) provides that the population within the 1 V/m contour may not exceed 1.0 percent of the population within the 25 mV/m contour except where the number of persons within the 1 V/m contour is 300 or less.

[2] Section 73.3555(a) requires in pertinent part that no license will be granted to any party if such party directly or indirectly owns, operates or controls one or more AM broadcast stations and the grant of such license will result in any overlap of the predicted or measured 1 mV/m groundwave contours of the existing and proposed stations.

V–A of FCC Form 301. An amendment will be required.

5. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed.[3] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

6. Accordingly, It Is Ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. It Is Further Ordered, that Salina Broadcasting Co. shall submit the amendment specified in paragraph 2 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

8. It Is Further Ordered, that Melinda W. Sittre shall submit the amendments specified in paragraphs 3 and 4 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. It Is Further Ordered, that the construction permit for Melinda W. Sittre, should it be granted, shall contain the following condition: Before program test authority (PTA) is granted, Melinda W. Sittre shall sever all connection with station KSVC, Richfield, Utah.

10. It Is Further Ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

11. It Is Further Ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicant, shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

12. It Is Further Ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publications of such as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–5620 Filed 3–7–85; 8:45 am]

BILLING CODE 6712-01-M

[3] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the final Acts of ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

Auto-Phone Co. and MCI Airsignal of CA, Inc.; Order Designating Applications for Hearing

In re Applications of:

James E. Walley, dba Auto-Phone Company.	CC Docket No. 85–33, file No. 20389–CD–P–(A)–84.
For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KDS498 in the Public Mobile Service at Yuba City, California.	
James E. Walley, dba Auto-Phone Company.	File No. 20829–CD–P–84.
For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KDS498 in the Public Land Mobile Service at Oroville, California.	
MCI Airsignal of California, Inc.	File No. 21476–CD–P–84.

For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KRM981 in the Public Land Mobile Service at Marysville, California.

Adopted February 6, 1985.
Released March 5, 1985.

By the Common Carrier Bureau:

1. On November 2, 1983, James E. Walley dba Auto-Phone Company (Auto-Phone) filed an application for a construction permit to establish an additional one-way facility to operate on frequency 158.70 MHz at Yuba City, California. The application was accepted for filing on Public Notice of November 23, 1983. On December 9, 1983, Auto-Phone filed an application to establish an additional facility to operate on frequency 158.70 MHz at Oroville, California. The application was accepted for filing by Public Notice of December 21, 1983. On January 16, 1984, MCI Airsignal of California (MCI) filed an application for an additional facility at Marysville, California to operate on frequency 158.70 MHz. This application was accepted for filing by Public Notice of February 15, 1984. The applications have not been protested.

2. After careful examination of the applications, we find the applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Auto-Phone, and MCI to use the same frequency, 158.70 MHz, in the same geographical area are electrically mutually exclusive; [1] therefore, a comparative hearing [2] will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered that the applications of Auto-Phone, File No. 20389–CD–P–(A)–84 File No. 20829–CD–P–84, and MCI File No. 21476–CD–P–84 are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[3] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[4] and to

[1] It should be noted that since the same applicant, Auto-Phone, has applied for two locations, these applications are not mutually exclusive with each other and a grant of one would not preclude a grant of the other.

[2] Since Auto-Phone and MCI have applied for additional facilities, a comparative hearing rather than a lottery will be held, pursuant to § 22.33(b)(1) *as amended* effective January 17, 1985. *See*, Reconsideration of Second Report and Order, General Docket No. 81–768, FCC 84–596, released December 4, 1984; 49 FR 49, 466 (1980).

[3] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[4] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propogation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits).

determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It Is Further Ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It Is Further Ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It Is Further Ordered, That the applicants may file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

7. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Petitions for the reconsideration under § 1.106 or applications for review under § 1.115 of the rules may be filed within 30 days of the date of public notice of this Order. *See* § 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the Federal Register.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-5621 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

John H. Leland and Garcia Communications; Hearing Designation Order

In re applications of:

John H. Leland	MM Docket No. 85-29; File No. BPCT-840727KI.
Garcia Communications	File No. BPCT-840921LA.

For Construction Permit, Morehead, Kentucky.

Adopted: January 23, 1985.
Released: March 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John H. Leland (Leland), and Garcia Communications (Garcia) for authority to construct a new commercial television station on Channel 67, Morehead, Kentucky.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and populations that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been made that the tower height and location proposed by Garcia [1] would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Leland and Garcia each proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States Television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of either application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Candaian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Garcia Communications would constitute a hazard to air naviagation.

2. To determine which of the propsoals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that, in the event of a grant of either application, the construction permit shall contain the following condition:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to consent by Canada.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5622 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Garcia.

Owensboro Television and Powers Communications; Hearing Designation Order

In re applications of:

Johnnie B. Woodbery d.b.a. Owensboro Television.	MM Docket No. 85-48; File No. BPCT-840802KH.
Glen Powers d.b.a. Powers Communications.	File No. BPCT-840831KE.

For Construction Permit for New TV Station, Owensboro, Kentucky.

Adopted: February 21, 1985.
Released: March 5, 1985.

By the Chief, Video Services Division.

1. The Commission by the Chief, Video Services Division, acting pursuant

to delegated authority, has before it the above-captioned mutually exclusive applications of Johnnie B. Woodberry d.b.a. Owensboro Television and Glen Powers d.b.a. Powers Communications, for authority to construct a new commercial television station on Channel 61, Owensboro, Kentucky.

2. No determination has been made that the tower height and location proposed by Owensboro Television would not constitute a hazard to air navigation.[1]

3. The contour map submitted by Owensboro Television is unacceptable because:

(1) Either the scale of miles is wrong or the contours are drawn much smaller than its response to Item 15, Section V-C, FCC Form 301, indicates.

(2) Portions of the coverage area are blank.

(3) The coordinates in the application indicate a transmitter site about 13 miles west of Owensboro, but the countours are centered at Owensboro.

Owensboro Television will be required to submit an appropriate amendment to correct these errors, to the presiding Administrative Law Judge, within 20 days after this Order is released.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the application must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Owensboro Television would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

7. It is further ordered, that Owensboro Television shall submit a new contour map to correct the discrepancies noted in Paragraph 3, to the presiding Administrative Law Judge, with in 20 days after this Order is released.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5623 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Owensboro Television proposes to mount its antenna on the tower of AM Station WSTO, Owensboro, Kentucky. The coordinates and height specified by Owensboro Television do not agree with those of Station WSTO. Owensboro must file FAA Form 7460-1 with the FAA.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby give 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 20572, within 15 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.: 202-008050-012.

Title: Sri Lanka/U.S.A. Conference Agreement.

Parties:

Hoegh Lines

The Scindia Steam Navigation Co, Ltd.

The Shipping Corporation of India Limited

Waterman Isthmian Line

Synopsis: The proposed amendment would modify the scope of the agreement to include service from Sri Lanka to U.S. Atlantic and Gulf ports, by direct call or transshipment including joint water-land transport via the West Coast of the United States. It would change the name of the conference from Ceylon/U.S.A. Conference to Sri Lanka/U.S.A. Conference. It would also restate the agreement to conform with the format requirements of the Commission's regulations and incorporate mandatory provisions required by the Shipping Act of 1984.

Dated: March 5, 1985.

By order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5632 Filed 3-7-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204-010066-006.

Title: U.S. Atlantic and Pacific—Colombia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.

Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would delete Delta Steamship Lines, Inc. and add United States Lines, Inc. as parties to the agreement. The parties have requested a shortened review

period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 217-010731.

Title: Space Charter Agreement between Sea-Land Service, Inc. and United Arab Shipping Company (SAG).

Parties:

Sea-Land Service, Inc. (Sea-Land)

United Arab Shipping Company (SAG) ("UASC")

Synopsis: The proposed agreement would establish a space chartering arrangement between the parties in the trade between ports in the U.S. Atlantic and Gulf range and United States and Canadian points and ports and ports and points in Saudi Arabia, United Arab Emirates, Oman, Qatar, Kuwait, India, Pakistan, Bahrain, Bangladesh, Sri Lanka, Jordan and Iraq. It would guarantee Sea-Land the use of 3,350 TEU spaces per year on UASC's vessels and allow the use of 1,150 addditional TEU spaces per year if required.

Dated: March 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5634 Filed 3-7-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Approval of Agreement

Agreement No.: 217-010652.

Title: Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Slot Purchase Agreement.

Parties:

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Synopsis: The parties to the referenced agreement have provided notice of the termination of the agreement. The Commission hereby gives notice of its intent to terminate its previously granted approval of Agreement No. 217-010652 effective February 21, 1985, the date the parties' termination notice was received. The parties have requested a shortened review period.

Dated: March 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5633 Filed 3-7-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CB&T Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire Calumet Financial Associates, Inc., Knoxville, Tennessee, thereby engaging in the provision of portfolio management and investment advisory services for fixed-income portfolios for which the Company is paid a fee on either a monthly or quarterly basis and the execution of securities transactions for fixed-income portfolios management advisory service clients, with securities being limited to obligations of the United States, obligation of the States and their political subdivisions and other obligations that state member banks may be authorized to underwrite and deal in.

2. *First Metropolitan Financial Corporation*, Baton Rouge, Louisiana; to engage through its subsidiary, First Metropolitan Mortgage Corporation, Baton Rouge, Louisiana, in making and servicing mortgage loans. These activities would be conducted in the southeastern and southwestern United States.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5561 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

First Commerce Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to merge with First Lafayette Bancrop, Inc., Lafayette, Louisiana, thereby indirectly acquiring First National Bank of Lafayette, Lafayette, Louisiana, and MSDI Company, Lafayette, Louisiana, a non-banking subsidiary; and to merge with City National Bancshares, Inc., Baton Rouge, Louisiana, thereby indirectly acquiring City National Bank or Baton Rouge, Baton Rouge, Louisiana.

First Commerce Corporation has also applied to acquire MSDI Company, Lafayette, Louisiana, thereby engaging in data processing activities pursuant to § 225.25(b)(7). These activities would be conducted in Lafayette, Louisiana.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5562 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

FNB Corp., 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 March 29, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FNB Corp.*, Asheboro, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Randolph County, Asheboro, North Carolina.

B. **Federal Reserve Bank of Atlanta**, (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to acquire 100 percent of the voting shares of The First National Bank of Lake Charles, Lake Charles, and Rapides Bank & Trust Company, Alexandria, Louisiana.

2. *U S Bancshares*, Morristown, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of United Southern Bank of Morristown, Morristown, Tennessee.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-Missouri Bancshares, Inc.*, Nevada, Missouri; to become a bank holding company by acquiring 98.8 percent of the voting shares of Polk County Bank, Bolivar, Missouri.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Buerge Bancshares of Girard, Inc.*, Girard, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Mid American Bancshares, Inc., Girard, Kansas, thereby indirectly acquiring The First National Bank of Girard, Girard, Kansas.

2. *Wichita Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Charter Bank, N.A., Wichita, Kansas. In this regard Fourth Financial Corporation, Wichita, Kansas, has applied to acquire 24.9 percent of the voting shares of Wichita Bancshares, Inc., Wichita, Kansas, the proposed parent of Charter Bank, N.A., Wichita, Kansas.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5563 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

Merchants Capital Corp.; Notice of Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Govenors. 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 intrests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Merchants Capital Corporation*, Vicksburg, Mississippi; to engage *de novo* through its subsidiary, Merchants

Data Services, Vicksburg, Mississippi, in conducting data processing activities as a service to banks and non-banks. Such activities will involve the collections, subscription, processing, and storage of banking, financial or related economic data for itself and others in the marketing by-products of data processing activity as well as making excess processing time available to other users. These activities would be conducted in the State of Mississippi.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5564 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT 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 March 1, 1985.

Public Health Service

National Institutes of Health

Subject: Cohort Study of Grain Millers—New.
Respondents: Businesses or other for-profit.
OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Premarket Notification Submission (510(k)) Extension—(0910-0120).
Respondents: Businesses or other for-profit.
Subject: Product License Application for the Manufacture of Source Plasma (Human) Product License Application for Therapeutic Exchange Plasma—Extension—(0910-0040).
Respondents: Businesses or other for-profit.
OMB Desk Officer: Bruce Artim.

Centers for Disease Control

Subject: NIOSH Information Dissemination Strategy—Extension (0920-0031).
Respondents: Individuals.
OMB Desk Officer: Fay S. Iudicello.

Health Care Financing Administration

Subject: Annual Report for Home and Community Based Services Waiver (HCFA-371)—Extension (0938-0272).
Respondents: State Medicaid Agencies.
Subject: Annual Expenditure Report for Home and Community Based Services Waiver (HCFA-372)—Extension (0938-0272).
Respondents: State Medicaid Agencies.
Subject: Integrated Quality Control Review Worksheet (HCFA-316)—Reinstatement (0938-0094).
Respondents: State Agencies.
Subject: Hospice Statements of Reimbursements HCFA 278,279,280—Revision (0938-0177).
Respondents: Hospices.
OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Winter 1984-1985 Private Sector Energy Assistance Survey—New.
Respondents: Utility companies.
Subject: Corrective Action Plan and Progress Report—Extension (0960-0279).
Respondents: States.
Subject: Annual Survey of Refugees-Revision-(0960-0308).
Respondents: Individuals or households.
OMB Desk Officer: Robert J. Fishman.

Copies of the above information collection clearance packages can be obtained by calling the HHS Report Clearance Officer on 202-245-6511.

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, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: March 4, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-5554 Filed 3-7-85; 8:45 am]

BILLING CODE 4150-04-M

Annual Revision of the Poverty Income Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides a revision of the Federal poverty income guidelines to account for increases in the Consumer Price Index.

DATE: Effective March 8, 1985.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty guidelines in general, contact Joan Turek-Brezina or Michele Adler (telephone: (202) 245-6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for that program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512).

SUPPLEMENTARY INFORMATION: This notice provides the 1985 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Reconciliation Act of 1981. As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (e.g., 130% or 185% of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective until a regulation or notice specifically applying to the program in question has been issued.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, *Current Population Reports* Series P-60, No. 144 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions. The poverty guidelines are applicable to both farm and nonfarm families.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.)

(b) *Family unit of size one.* In conjunction with the Federal poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—i.e., a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income.* Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, and regular insurance or annuity payments; and income from dividends, interest, rent, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of the food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal programs as Medicaid, Food Stamps, or public housing.

1985 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,250
2	7,050
3	8,850
4	10,650
5	12,450
6	14,250
7	16,050
8	17,850

For family units with more than 8 members, add $1,800 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,560
2	8,810
3	11,060
4	13,310
5	15,560
6	17,810
7	20,060
8	22,310

For family units with more than 8 members, add $2,250 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,040
2	8,110
3	10,180
4	12,250
5	14,320
6	16,390
7	18,460
8	20,530

For family units with more than 8 members, add $2,250 for each additional member.

Dated: March 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

COMPUTATION FOR 1985 ANNUAL REVISION TO POVERTY INCOME GUIDELINES

[Families in all States (except Alaska and Hawaii) and the District of Columbia]

Size of family unit	Poverty thresholds in 1983 (weighted averages)[1]	Column multiplied by 1.0426 price inflator[2]	Difference between column 3 entries	Average difference in column 3[3]	Feb. 1985 guidelines
(1)	(2)	(3)	(4)	(5)	(6)
1	$5,061	$5,277			$5,250
2	6,483	6,759	$1,482	$1,800	7,050
3	7,938	8,276	1,517	1,800	8,850
4	10,178	10,612	2,336	1,800	[4] 10,650
5	12,049	12,562	1,950	1,800	12,450
6	13,630	14,211	1,649	1,800	14,250
7	15,500	16,160	1,949	1,800	16,050
8	17,170	17,901	1,741	1,800	17,850

[1] *Source:* Column 2 entries are from Table E-1 of U.S. Bureau of the Census, Technical Paper 52, *Estimates of Poverty Including the Value of Noncash Benefits: 1983*, U.S. Government Printing Office, Washington, D.C. August 1984.

[2] *Source:* U.S. Department of Labor, CPI Press Release, USDL 65-29, January 1985, Table 1-A. (The Consumer Price Index (CPI-U) for all items was 298.4 for calendar year 1983 and 311.1 for calendar year 1984, an increase of 4.26 percent.)

[3] The arithmetic average of Column 4 entries, rounded to the nearest multiple of $20.

[4] Obtained by multiplying the average poverty threshold for a family of 4 persons in 1983, as published in Table E-1 ($10,178), by the inflation factor from calendar year 1983 to calendar year 1984 (1.0426) and rounding the result upward to the nearest whole multiple of $50. All other entries in Column 6 are obtained by successive addition or subtraction of the average difference ($1,800) to the size-4 1985 guideline entry ($10,650).

For Alaska and Hawaii, scaling factors of 1.25 and 1.15 are applied to the 1985 continental guidelines and the results rounded to multiples of $10. For family units with more than 8 members, add $1,800 for each person in the continental U.S., $2,250 for each person in Alaska and $2,070 for each person in Hawaii.

[FR Doc. 85-5714 Filed 3-7-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84P-0433]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that a temporary permit had been issued to Ralston Purina Co. to market test canned chunked-style, skinless, and boneless salmon packed in water. This document corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-1297 appearing on page 2619 in the issue of Thursday, January 17, 1985, the docket number is corrected to read as set out in the heading of this document.

Dated: March 1, 1985

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5548 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-85-8251]

Memorandum of Understanding With the National Institute on Drug Abuse

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the National Institute on Drug Abuse

(NIDA). This agreement describes procedures for the cooperative and timely interaction between NIDA and FDA in expediting the responsibilities of the Public Health Service (PHS) for the domestic scheduling of drugs of abuse. Nothing in this agreement is intended to compromise FDA's authority to make and forward to the Assistant Secretary for Health [ASH] all drug scheduling recommendations.

DATE: This agreement became effective December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Justka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the National Institute on Drug Abuse and the Food and Drug Administration

I. Purpose

This agreement describes procedures for the cooperative and timely interaction between the National Institute on Drug Abuse (NIDA) and the Food and Drug Administration (FDA) in expediting the responsibilities of the Public Health Service (PHS) for the domestic scheduling of drugs of abuse. Nothing in this memorandum is intended to compromise FDA's authority to make and forward to the Assistant Secretary for Health (ASH) all drug scheduling recommendations.

II. Background

The Secretary of Health and Human Services (HHS) has delegated to the ASH the authority to make domestic drug scheduling recommendations. The Attorney General (through the Drug Enforcement Agency (DEA)) initiates on his motion, upon the request of the Secretary of HHS, or upon the petition of an interested person, proceedings for the scheduling, amendment, or repeal of a domestic scheduling classification. Scheduling proceedings are governed by the provisions of the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq. Once the Attorney General initiates a scheduling proceeding, he must request from the Secretary of HHS a scientific and medical evaluation of the drug or substance at issue and a recommendation as to whether the drug or substance should be controlled domestically.

At the present time, HHS responds to drug scheduling requests from DEA in accordance with a procedure described in a 1970 memorandum by Merlin K. Duval, M.D., then ASH. Under that procedure, FDA has the responsibility for gathering appropriate data pertaining to the abuse potential of marketed drugs. FDA considers available data and positions from other relevant HHS agencies in preparing for the ASH the scientific and medical evaluations and recommendations. FDA then forwards the evaluations and recommendations to the ASH. The 1970 memorandum states that the director of the agency charged with drug abuse prevention should always be consulted by FDA and that his/her position on drug scheduling should be included in the evaluation and recommendations. FDA is the lead agency, however, the Drug Abuse Staff (DAS) of the Division of Neuropharmacological Drug Products (DNDP) in the Office of Drug Research and Review, which is part of FDA's Center for Drugs and Biologics (CDB) performs the initial scientific and medical evaluation upon which a scheduling recommendation is based. The review is often performed in conjunction with FDA's review of new drug applications (NDA).

Both NIDA and FDA believe that a new procedure to expedite the development of domestic drug scheduling recommendations is needed. The new procedure described herein reflects FDA's role as the lead PHS agency in the process which results in the forwarding of domestic drug scheduling recommendations to the ASH. It also recognizes FDA's commitment to collaborate fully with NIDA in the development of such recommendations because of NIDA's expertise in investigating and evaluating the potential for abuse associated with drug products.

By this memorandum, FDA is formally providing NIDA the opportunity to present its views on domestic drug scheduling to FDA at an appropriately early stage in the NDA process or in other circumstances in which issues pertaining to domestic drug scheduling may arise. While NIDA's opinions will not be binding on FDA, both agencies agree to make every effort to resolve differences of opinion, should they arise, as early as possible in the course of their interactions pertaining to domestic drug scheduling.

III. Substance of Agreement

The procedures to be used in the development of domestic drug scheduling recommendations will be as shown below:

A. *Initial Center for Drugs and Biologics Review.* 1. Drug products subject to an NDA.

a. Upon receipt of an NDA for a drug product that may, under provisions of the CSA, require a scheduling recommendation to be made by the ASH, the DNDP, through the DAS, will notify NIDA of the receipt of the NDA submission.

b. Notice of DNDP organizational meeting on the NDA.

(1) FDA, through the DNDP, will extend an invitation (stating the date, time, and location of the meeting) to NIDA to designate a representative to attend the introductory meeting of the NDA review team. A goal of this meeting is to determine if the drug under review should be evaluated for abuse potential.

(2) The NIDA representative shall inform the team if NIDA wishes to participate in evaluation of the drug's abuse potential.

(3) Any employee of NIDA who reviews, considers, or discusses any trade secret and confidential commercial information contained in an NDA in assessing the abuse potential of the product under consideration must first obtain any necessary FDA conflict-of-interest clearances. Clearances pertaining to confidential information are not necessary for NIDA employees who will review only information for which the NDA sponsor has waived proprietary claims (see b.(4) below). CDB will be responsible for initiating conflict-of-interest clearances through FDA's Policy Management Staff.

(4) In the case of drugs to be evaluated for abuse potential, FDA shall request the NDA sponsor to submit a separate drug abuse package containing relevant animal and human abuse-related data together with other information concerning the drug's potential for abuse and diversion. This request will include a request to the sponsor to waive confidentiality of the data provided so that the data can be given to NIDA for evaluation.

(5) At this meeting a determination will be made if NIDA is to receive a copy of the drug abuse data and information package to be requested from the NDA sponsor.

(6) NIDA will inform FDA if it plans to conduct an independent evaluation of the drug in question.

(7) NIDA will provide FDA by the date of the 90-day meeting (see c. below) any data it may have on the drug in question for use by the review team.

c. Notice of the DNDP 90-day NDA review team meeting.

(1) NIDA shall be provided with a written notification stating the date, time, and location of the proposed meeting. The NIDA representative shall be requested to participate in this meeting.

(2) If NIDA participates in this meeting, it indicates that NIDA has an ongoing interest in the drug under review. If NIDA elects not to participate in this meeting, then NIDA will not participate as a member of the DNDP 90-day review team for the substance under evaluation.

(3) If NIDA participates in the 90-day NDA review team meeting, FDA will provide the NIDA representative a copy of the drug abuse data and information obtained from the NDA sponsor. If no such data and information are available, FDA will provide the NIDA representative data extracted from the NDA submission which are related to a determination of the abuse potential of the drug under review, provided all employees of NIDA who will be reviewing, considering, or discussing the confidential data or information have obtained an FDA conflict-of-interest clearance, or authorization to provide these data to NISA has been obtained from the NDA sponsor. From these data, NIDA will determine if it should perform additional studies, or confirm the NDA sponsor's data, from information it has on studies already performed.

(4) NIDA will present data it has available on any studies of abuse potential either already carried out or planned for the drug under evaluation.

(5) At the 90-day meeting and any time thereafter, FDA and NIDA will exchange in a

timely manner any new data concerning the abuse potential of the drug under evaluation that may become available. As discussed above, appropriate clearances must be secured before data may be shared with NIDA.

2. Drug products not subject to a pending NDA: When a domestic drug scheduling question arises other than in connection with FDA review of a pending NDA, FDA will inform NIDA of the scheduling issue and will invite NIDA to participate in the evaluation process.

3. In all situations covered by Part A of this agreement, FDA will make available to NIDA a copy of its proposed draft scheduling recommendation.

B. *Consideration of Draft Scheduling Recommendations by the FDA Drug Abuse Advisory Committee (DAAC.* 1. The Executive Secretary of DAAC will notify NIDA when a scheduling matter has been placed on a DAAC meeting agenda and will provide NIDA a copy of the agenda as soon as it is available.

2. Data provided to DAAC to assist in its deliberation on a drug scheduling matter will be made available to the NIDA representative at the same time they are made available to the DAAC members. The NIDA representative shall have secured any necessary FDA conflict-of-interest clearance in advance of receipt of these data or authorization to release the data will be secured from the NDA sponsor.

3. NIDA will provide DAS any comments or specific data it has regarding an agenda item as far in advance of the meeting as possible so that NIDA's comments and data can be sent to the DAAC members for review prior to the meeting.

4. NIDA may indicate its desire to make a formal presentation to DAAC on any drug scheduling item that is part of the scheduled agenda for a DAAC meeting. Such a presentation would normally consist of at least one of the following:

a. A response to a general question concerning drug scheduling. (DAS should have received a copy of the data NIDA will present—see B.3. above.)

b. Results of an independent evaluation conducted by NIDA. The presentation should emphasize NIDA's additional data or different points of view from those of FDA. Data should be provided in advance to DAS—see B.3. above.)

c. A statement that NIDA has determined to present no data.

C. *Review of Final Draft Scheduling Recommendations.* 1. After the DAAC meeting, a proposed final scheduling recommendation will be drafted by and circulated within CDB. A copy of the draft recommendation will promptly be provided to NIDA for comment.

2. If the CDB draft scheduling recommendation is substantially revised by FDA, a copy of the revised document will be transmitted to NIDA for further comment.

3. If NIDA does not concur in the final recommendation before it is submitted to the FDA Commissiner for signature, NIDA should specify its nonconcurrence to the FDA Commissioner in writing. The data upon which NIDA's position is based should be included in this document.

4. If disagreement between the agencies cannot be resolved, the NIDA dissent will be forwarded to the ASH concurrently with FDA's scheduling recommendations.

IV. Name and Address of Participating Parties

A. Food and Drug Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

B. National Institute on Drug Abuse, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. For Food and Drug Administration: Associate Commissioner for Health Affairs (currently Stuart L. Nightingale, M.D., 301–443–6143.

B. For National Institute on Drug Abuse: Associate Director for Medical and International Affairs (currently James R. Cooper, M.D.), 301–443–4877.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties. It may be modified by mutual consent or terminated by either party upon the giving of a 60-day written notice.

Approved and accepted for the Food and Drug Administration.

By: Mark Novitch,

Title: Deputy Commissioner.

Date: November 13, 1984.

Approved and accepted for the National Institute on Drug Abuse.

By: William Pollin,

Title: Director.

Date: December 11, 1984.

Effective date. This memorandum of understanding became effective December 11, 1984.

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5550 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[FDA–225–85–0001]

Memorandum of Understanding With the University of Tennessee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the University of Tennessee. This agreement provides the mechanism for collaborative research and educational programs between the University of Tennessee through its Center for Health Sciences (UTCHS) and FDA's National Center for Toxicological Research (NCTR).

DATE: This agreement became effective December 17, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the University of Tennessee, Memphis, Tennessee and the Food and Drug Administration, National Center for Toxicological Research

I. Purpose

This agreement provides the mechanism for collaborative research and educational programs between the University of Tennessee through its Center for Health Sciences (UTCHS) and the Food and Drug Administration's National Center for Toxicological Research (NCTR).

II. Background

The University of Tennessee Center for the Health Sciences is a public institution within the University of Tennessee system which has an enrollment of some 42,500 students. UTCHS is composed of the Colleges of Community and Allied Health Professions, Denistry, Medicine, Nursing, and Pharmacy, as well as the Graduate School of Medical Sciences. There are approximately 2,000 students in these advance programs at UTCHS. One of the major objectives of the professional programs of the University is to produce graduates who are well prepared and highly motivated to pursue advanced work in the sciences.

The National Center for Toxicological Research is a Federal laboratory specializing in biomedical research. A part of NCTR's goal is to assist in training highly qualified toxicologists. The collaborative program with UTCHS provides an opportunity to accomplish this while furthering NCTR's research goals.

III. Substance of Agreement

Through this agreement, NCTR will provide facilities, equipment, materials, and limited supervision for outstanding science students who will serve as guest workers at the Center performing collaborative research with NCTR scientists. In addition, NCTR will provide guest worker positions or appointments to do collaborative research for qualified faculty members of UTCHS, if spaces are available during summers, periods of sabbatical leave, or other mutually agreeable periods.

NCTR and UTCHS will establish cooperative scientific activities, which may include joint guest lectures and seminar programs, for the benefit of all members of

both institutions to promote exchange of information on the latest developments at both institutions. To further accomplish this objective, members of the staffs of NCTR and UTCHS will be granted access to the library facilities of both institutions.

IV. Name and Address of Participating Parties

A. University of Tennessee Center for the Health Sciences, 800 Madison Ave., Memphis, TN 38163.

B. Food and Drug Administration, National Center for Toxicological Research, Jefferson, AR 72079.

V. Liaison Officers

A. For University of Tennessee Center for the Health Sciences: Professor, Department of Medicinal Chemistry, College of Pharmacy (currently Dr. W. H. Lawrence), 901–528–6927 or 901–528–6080.

B. For the National Center for Toxicological Research: Director, National Center for Toxicological Research, (currently Dr. Ronald W. Hart), 501–541–4517.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue indefinitely. It may be modified by mutual consent or terminated by either party upon a 60-day advance written notice to the other.

Approved and accepted for the University of Tennessee.

By: James C. Hunt,

Title: Chancellor.

Date: November 23, 1984.

By: Emerson H. Fly,

Title: Vice President.

Date: December 17, 1984.

Approved and accepted for the Food and Drug Administration.

By: Joseph P. Hile,

Title: Associate Commissioner for Regulatory Affairs.

Date: October 5, 1984.

Effective date. This memorandum of understanding became effective December 17, 1984.

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5532 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0060]

UBE Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Springborn Regulatory Services, Inc., on behalf of Ube Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3796) has been filed by Springborn Regulatory Services, Inc., Enfield, CT 06082, on behalf of the Ube Industries, Ltd., Tokyo, Japan, proposing that the food additive regulations be amended to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–5547 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0082]

Economics Laboratory, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Economics Laboratory, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5H3842) has been filed by Economics Laboratory, Inc., St. Paul, MN 55102, proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles

The potential evironmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–5546 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0023]

Drew Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Drew Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sorbitan monooleate as a direct additive to clarify cane and beet sugar juice and liquor.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 345(b)(5))), notice is given that a petition (FAP 5A3840) has been filed by Drew Chemical Corp., One Drew Chemical Plaza, Boonton, NJ 07005, proposing that the food additive regulations be amended to provide for the safe use of sorbitan monooleate as a direct additive to clarify cane and beet sugar juice and liquor.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5545 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0057]

The Goodyear Tire & Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Goodyear Tire & Rubber Co. has filed a petition proposing that the food additive regulations be amended to include dimethyl-5-sulfoisophthalic acid, and/or its sodium salt, in the list of acids for polyester resins (including alkyd type) intended for use as components of adhesives in food-packaging applications.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration., 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3825) has been filed by The Goodyear Tire & Rubber Co., 130 Johns Ave., Akron, OH 44316-0001, proposing that the food additive regulations be amended to include dimethyl-5-sulfoisophthalic acid, and/or its sodium salt, in the list of acids for polyester resins (including alkyd type) intended for use as components of adhesives in food-packaging applications.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5542 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by George J. Gerstenberg, Director, Brooklyn District Office.

DATE: The meeting will be held at 1 p.m., Thursday, March 28, 1985.

ADDRESS: The meeting will be held at the Commack Public Library, 18 Hauppauge Rd., Commack, NY 11725.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018-2195, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: March 5, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5543 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement and Proposed Funding Preference for Grants for Geriatric Education Centers

The Bureau of Health Professions, Health Resources and Services Administration, announces the acceptance of applications for Fiscal Year 1985 Grants for Geriatric Education Centers under the authority of Section 788(b) of the Public Health Service Act, as amended by Pub. L. 97-35 and invites comments on the proposed funding preference as set forth below.

Grants will be awarded to support the development of additional areawide organizational arrangements called Geriatric Education Centers focused on strengthening and coordinating multidisciplinary training in geriatric health care involving several health professions. These centers are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged. To receive support, applicants must meet the requirements of 42 CFR Part 57, Subpart NN.

Functioning within a self-defined geographic area, which may be a metropolitan area, a State or portion thereof, or an area including all or part of two or more States, a Geriatric Education Center provides the health professions educational community within that area with comprehensive services such as:

1. Training which prepares faculty in the various health professions schools to carry out geriatric education programs;

2. Serving as a focal point for collection and dissemination of information on geriatric education programs and instructional materials;

3. Providing educational services, including consultation, in support of geriatric training of health professionals, to schools and programs, professional associations, and State, local, and voluntary agencies;

4. Assisting health professions schools in the selection, development, implementation, and evaluation of appropriate geriatric course materials and curriculum improvements; and

5. Assisting in the establishment of further organizational arrangements in other components of a health sciences center or among health professions educational programs to provide multidisciplinary resources for geriatric

leadership and coordination in the teaching program.

Any health profession, allied health profession, or nurse training institution, or any public or private nonprofit entity is eligible to apply for a grant. Applications are encouraged from health professions schools, and educational entities, or consortia of such institutions, that have as a purpose the objectives set forth in this announcement. All applicants must be located in the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-31), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be required, please contact: Geriatric Program Representative, Bureau of Health Professions, Health Resources and Services Administration 5600 Fishers Lane, Room 8-101, Rockville, Maryland 20857, Telephone: (301) 443-6887.

Approximately $5.0 million is expected to be available in Fiscal Year 1985 for competing awards. Authorization for the current fiscal year is provided by the Department of Labor, Health and Human Services and Education and Related Agencies Appropriation Act, (Pub. L. 98-619), enacted on November 8, 1984.

The application deadline date is May 20, 1985. Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 42 CFR Part 100.

Proposed Funding Preference: In determining the order of funding of competing applications which have been recommended for approval, it is proposed to give a funding preference to applications which satisfactorily address all three of the program priorities listed below. All applications, however, will be reviewed and given consideration for funding.

(1) Projects which will train faculty or students from four health professions, one of which is allopathic or osteopathic medicine. The additional three or more professions proposed shall be designated from among the following:

a. Allied health professions which provide direct patient care services;

b. Dentistry;

c. Nursing;

d. Optometry;

e. Pharmacy;

f. Podiatry;

g. Appropriate public or community health specialties.

(2) Projects which currently have or plan to provide for a high degree of areawide collaboration as evidenced by:

a. Significant multidisciplinary health care educational activities;

b. Letters of agreement or assurance, among participating entities, such as professional schools, teaching facilities and other clinical sites, professional associations, and State and local health agencies; and

c. Organization or other arrangements for participation by the social and behavioral science disciplines.

(3) Projects which during the first year will initiate a training program for health professions schools and programs outside the applicant organization. This program must provide during the first year a minimum of at least 20 weeks of training among at least six faculty. The applicant must demonstrate the availability of resources to initiate such training.

Interested persons are invited to submit written comments regarding this funding preference to Director, Division of Associated and Dental Health Profession, Bureay of Health Professions at the address given below.

All comments received not later than April 8, 1985 will be considered before a final funding preference for Fiscal Year 1985 is established.

Normally, the comment period would be 60 days. However, due to the need to implement any changes in the funding preference for the Fiscal Year 1985 award cycle, this comment period has been reduced to 30 days. After the close of the comment period, the final funding preference will be published as a notice in the Federal Register.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-101, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6853.

All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

In determining projects to be funded from among applicants recommended for approval including those assigned a funding preference, the Secretary, after consultation with the National Advisory Council of Health Professions Education, may give consideration to the geographic location of the project in relation to other Geriatric Education Centers funded or to be funded by this grant program, and to regional and are wide needs.

Dated: March 2, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85-5531 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-16-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: March 25, 1985, 7:00 p.m.–9:00 p.m.; March 26, 1985, 8:00 a.m.–8:00 p.m.; March 27, 1985, 9:00 a.m.–6:00 p.m.

Place: Salt Lake Sheraton Hotel, 255 Southwest Temple, Salt Lake City, Utah 84101.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: Reports by the Steering Committe of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Jim F. Young, 330 Independence Avenue SW., Room 4016 North, Washington, D.C. 20201, (202) 245-7634.

Dated: March 1, 1985.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 85-5555 Filed 3-7 85; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Uniform Minimum Health Data Sets; Meeting

Pursuant to the Federal Advisory Act (Pub.L 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS), Subcommitte pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, March 28, 1985 from 11:00 a.m. to 4:30 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

The Subcommittee will hear testimony from national associations involved in the provision of long term care on their reactions to the proposed long term care minimum data set.

Further information regarding this meeting of the Subcommitte may be obtained by contacting Henry S. Mount, National Committee on Vital and Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-7122.

Dated: February 28, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85-5557 Filed 3-7 85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Dr. Raul A. Perez-Rivera et al.

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 688249

Applicant: Dr. Raul A. Perez-Rivera, Universidad de Puerto Rico, Humacao, Puerto Rico 00661

The applicant requests an amendment to his permit (formerly PRT 2-8868) to include the capture and banding of the Puerto Rican plain pigeon (*Columba inornata wetmorei*) for enhancement of survival.

PRT 690784

Applicant: Horst W. Schmudde, Colts Neck, NJ

The applicant requests a permit to import 2 pairs of Hawaiian geese [*Nesochen* (=Branta) *sandvicensis*] from Berthold Wessjohann, Stapelfeld, West Germany for the purpose of enhancement of propagation.

PRT 690856

Applicant: Oklahoma City Zoo, Oklahoma City, OK

The applicant requests a permit to import one captive-bred male Malaya tapir (*Tapirus indicus*) from the Copenhagen Zoo, Denmark, for enhancement of propagation.

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: March 4, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-5594 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammals; Receipt of Application for Permit; Detroit Zoological Parks Department

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Name: Detroit Zoological Parks Department. File No. PRT 690489. Address: Royal Oaks, MI.

Type of Permit: Scientific Research.

Name and Numer of Animals: Polar bears (*Ursus maritimus*); 7.

Summary of Activity to be Authorized: The applicant proposes to take (anesthetize, extract premolars, eartag and tattoo) for research on age determination and related studies.

Source of Marine Mammals for Research: Animals are currently in captivity at Detroit Zoo, except for one which is at Riverbanks Zoo, Columbia, SC.

Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: March 4, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits; Federal Wildlife Permit Office.

[FR Doc. 85-5292 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permits for Marine Mammals; Mote Marine

On November 20, 1984, a notice was published in the **Federal Register** (49 FR 45813) that an application had been filed with the Fish and Wildlife Service by Mote Marine Lab (PRT 685009) for renewal of and an amendment to PRT 2-9757.

On January 22, 1985, a notice was published in the **Federal Register** (50 FR 2865) that an application had been filed with the Fish and Wildlife Service by Jane M. Packard (PRT 690699) for a permit to take (harass) two captive rehabilitated manatees (*Trichechus manatus*), for the purpose of scientific research.

Notice is hereby given that on February 13, 1985, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service renewed the original permit PRT 685009 (PRT 2-9757). The requested

amendments [additional takes of manatee (*Trichechus manatus*) and an expansion of the study area] were denied. On February 25, 1985, PRT 690699) was issued, subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: March 4, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-5593 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Designation of an Area of Critical Environmental Concern; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands within the Red Hills Management Area as an Area of Critical Environmental Concern (ACEC) and Notice of Availability of Final Red Hills Management Plan and Environmental Accessment.

SUMMARY: Public review on the draft Management Plan and Environmental Assessment for 7100 acres of BLM-administered public lands in Tuolumne County, California ended 20 April 1984. The Bureau received 65 comment letters on this draft Management Plan. Many of these comments were incorporated into the final Management Plan.

The major components of the proposed action is to designate 2600 acres as in Intensive Use Zone and 4500 acres for restricted use and as an ACEC. The ACEC was identified to protect five sensitive plant species found in this area. Cumulative surface disturbance in the ACEC is limited to less than five percent and the area is closed to off-road vehicle activity.

The area designated as the Red Hills, ACEC are described as follows:

Mount Diablo Meridian

T. 1 S., R. 14 E.,
Sec. 12, S½;
Sec. 13, NW¼, N½NE¼, SE¼, NE¼SE¼.
T. 1 S., R. 14 E.,
Sec. 7, lot 4;
Sec. 16, N½NW¼, NE¼, SE¼, S½SE¼, SW¼SW¼, S½SE¼SW¼;
Sec. 18, lots 1, 2, N½ lot 3;
Sec. 19, N½SW¼NE¼, SW¼SW¼NE¼;
Sec. 20, S½SE¼, SE¼SE¼SW¼, SE¼NE¼SE¼SW¼, SE¼SW¼S E¼SW¼;
Sec. 21, S½S½, NW¼SW¼;
Sec. 22, S½NE¼, SE¼, S½SW¼;
Sec. 23, lots 4, 5, 8, 9, 10, 12, 13, 14, 15, 16;
Sec. 24, SW¼NW¼, SW¼NE¼, SW¼, W½NW¼SE¼;
Sec. 25, NW¼NW¼NW¼, NE¼NW¼N W¼, SW¼NW¼NW¼;
Sec. 26, lots 1–8, includes W½ lot 9, 10–15, includes W½ lot 16;
Sec. 27, N½NE¼, E½SE¼NE¼, SW¼NE¼, W½SE¼, W½;
Sec. 28, E½, NW¼;
Sec. 29, NE¼, E½NW¼;
Sec. 34, W½NE¼NE¼, NW¼NE¼, N½NW¼;
Sec. 35, lots 21, 25.

A limited number of copies of the final Red Hills Management Plan are available upon request at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California, 95630, (916) 985–4474.

Dated: February 26, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-5602 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-40-M

[OR-22197-J (WASH)]

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that 1.3 acres of a land withdrawal for the Kellett Bluff Light Station continue for an indefinite period. The land(s) would remain closed to surface entry and mining but has been and would remain open to 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 U.S. Coast Guard proposes that 1.3 acres of the existing land withdrawal made by the Executive Order of July 15, 1875, be continued for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located at the south end of Henry Island in Section(s) 28, T. 36 N., R. 4w., W.M., San Juan County, Washington.

The purpose of the withdrawal is to protect the U.S. Coast Guard's Kellett Bluff Light Station. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not 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 office 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.

Dated: March 1, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-5603 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-33-M

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Emergency Coal Lease Application M 62073(ND); Comment Period Extension and Rescheduling of Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Public comment period extended and public hearing date rescheduled.

SUMMARY: On January 31, 1985, the Bureau of Land Management published notice FR Doc. 85–2513, Vol. 50, page 4601, requesting public comments on fair market value and maximum economic recovery for Emergency Coal Lease Application M 62073(ND); and setting the date of March 4, 1985, for public hearing.

DATES: Notice is given that the period for receiving comments has been extended to March 29, 1985; and that the public hearing has been rescheduled and will be held on March 29, 1985, on the environmental assessment, the proposed Emergency Coal Lease Application M 62073(ND), the fair market value and maximum economic recovery on the proposed lease tract. The public hearing will be held at 1:00

p.m., at the Midwest Federal Savings Bank, (Community Room), 221 First Avenue West, Dickinson, North Dakota.

ADDRESS: For more complete data on this tract, please contact Jeanette Bejot (telephone 406–657–6875), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107. Copies of the environmental assessment are available at this address or at the BLM, Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Dated: February 27, 1985.

Marvin LeNoue,

Associate State Director, Montana State Office.

[FR Doc. 85–5599 Filed 3–7–85; 8:45 am]

BILLING CODE 4310–84–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub. 222)B]

Burlington Northern Railroad Co.; Abandonment in Umatilla County, or; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 3.5 mile rail line near Smeltz, OR (milepost 0.00) and Duroc, OR (milepost 3.50) in Umatilla County, OR.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85–5590 Filed 3–7–85; 8:45 am]

BILLING CODE 7035–01

[Finance Docket No. 30522]

Burlington Shortline, Inc. and Keokuk Northern Real Estate Co., d/b/a Burlington Junction Railway; Exemption From 49 U.S.C. 10901, 11301, and 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10910(g), the Commission exempts Burlington Shortline, Inc. and Keokuk Northern Real Estate Company doing business as Keokuk Junction Railway from the provisions of the Interstate Commerce Act (except with respect to transportation under a joint rate).

DATES: This exemption is effective on March 8, 1985. Petitions to reopen must be filed by March 28, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30522 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: John D. Heffner, Suite 1000, 1250 I Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Decided: February 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor dissented in part. He would have granted the sought exemption under 49 U.S.C. 10505.

James H. Bayne,

Secretary.

[FR Doc. 85–5589 Filed 3–7–85; 8:45 am]

BILLING CODE 7035–01–M

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 to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Contico International, Inc., 1101 Warson Rd., St. Louis, MO 63132.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

(a) Pol-Tex International, 13830 Hatcherville Rd., Mont Belvieu, TX 77580. Incorporated in the state of Texas.

1. Parent corporation and address of principal office: Marathon Petroleum Company, 539 South Main Street, Findlay, Ohio 45840.

2. Wholly-owned subsidiaries which will participate in the operations, and States of Incorporation:

(a) Emro Marketing Company, a Delaware corporation;

(b) Muesing, Inc., an Indiana corporation;

(c) Webster Service Stations, Inc., a Delaware corporation.

1. Parent corporation and address of principal office: Miller & Hartman, Inc., 180 Greenfield Road, Post Office Box 1748, Lancaster, Pennsylvania 17603–1748.

2. Wholly-owned subsidiary which will participate in the operations and states of incorporation: Miller & Hartman Transportation, Inc., 180 Greenfield Road, Post Office Box 1748, Lancaster, Pennsylvania 17603–1784, A Pennsylvania corporation.

1. Parent corporation and address of principal office: Roanoke Electric Steel Corporation, P.O. Box 13948, Roanoke, Virginia 24038–3948.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(i) John W. Hancock, Jr., Inc.—Virginia.

(ii) Shredded Products Corporation—Virginia.

1. Parent corporation and address of principal office: G.S. Robins & Company, 126 Chouteau Avenue, St. Louis, Missouri 63102.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Robins Transportation Company, 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

(ii) Robins Solvents Company, 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

(iii) Ro Corp, Inc., 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

1. Parent corporation and address of principal Office: SSW Corporation, 902 North Rowe Street, Ludington, Michigan 49431.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

Wire Transport Company, Michigan

Straits Steel and Wire, Company, Michigan
Great Lakes Plating Corporation, Michigan
D & H Manufacturers, Inc., Michigan
Greenville Wire Products Co., Michigan.

1. Parent corporation and address of principal office: Sealed Air Corporation, Park 80 Plaza East, Saddle Brook, New Jersey 07662.

2. Wholly-owned subsidiaries which will participate in the operations, and states or provinces of incorporation:

Cellu-Products Company, Delaware
Sealed Air of Canada Limited, Ontario
Sealed Air Trucking, Inc., Delaware
Static, Inc., Delaware

James H. Bayne,

Secretary.

[FR Doc. 85-5571 Filed 3-7-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Norac Co., Inc.; Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 22, 1984, Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance 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, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 8, 1985.

Dated: March 4, 1985.

Gene R. Haislip,

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

[FR Doc. 85-5595 Filed 3-7-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 3, 1985, 2:00 p.m., RM. N3437 A, B, C, D, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, March 1, 1985.

Signed at Washington, D.C. this 1st day of March 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85-5637 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.B.C. Manufacturing Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filled in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 25th day of February 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
A.B.C. Manufacturing Co. (ILGWU)	Manning SC	1/28/85	1/23/85	TA-W-15,753	Uniforms, work.
Anchor Hocking Corp Plant 1 and Plant 2 (Amer. Flint Glass Workers).	Lancaster, OH	2/8/85	2/5/85	TA-W-15,754	Tableware items.
Barbara Leslie, A Div. of Sherman Mfg Co. (ILGWU)	Florence, SC	1/30/85	1/23/85	TA-W-15,755	Dresses, pants, and suits, ladies.
Block Industries (workers)	Wilmington, NC	1/28/85	1/20/85	TA-W-15,756	Sportshirts and dressshirts, men.
Block Industries (workers)	New York, NY	1/28/85	1/20/85	TA-W-15,757	Do.
Cushman Industries, Inc. (UAW & Co.)	Hartford, CT	2/4/85	1/28/85	TA-W-15,758	Chucks, power, manual, speed, high.
Dresser Industries, Inc., Harbison-Walker Refractories Div. (USWA).	Mount Union, PA	1/30/85	1/28/85	TA-W-15,759	Brick, refractory.
Henry I. Siegel Co. (workers)	Tiptonville, TN	2/1/85	1/28/85	TA-W-15,760	Vests, jackets and some jeans, cotton & denim.
Hyster Company (ILTBU)	Danville, IL	2/11/85	2/7/85	TA-W-15,761	Trucks, lift, industrial.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
ICL, Inc., Operations Div. (workers)	Utica, NY	2/7/85	1/31/85	TA-W-15,762	Computer terminals, video display units, printed circuit boards.
LTV Steel Corp (USWA)	Warren, OH	1/30/85	1/28/85	TA-W-15,763	Flat rolled steel.
Pathfinder Mines Corp., Shirley Basin Mine (USWA)	Shirley Basin, WY	2/1/85	1/30/85	TA-W-15,764	Uranium (yellow cake).
Plastronics (workers)	Milwaukee, WI	2/4/85	1/28/85	TA-W-15,765	Plastic disposable hospital products.
Samuels Shoe Co., Charleston "T" (workers)	Charleston, IL	2/1/85	1/24/85	TA-W-15,766	Shoes, dress, ladies.
Teledyne Columbia Steel Summerial (USWA)	Carnegie, PA	1/30/85	1/28/85	TA-W-15,767	Tube products, bar products flat bars.
United Shoe Machinery Corporation (UER & MWA)	Beverly, MA	2/7/85	2/1/85	TA-W-15,768	Castings machines.
Weyerhaeuser Company, Everett Wood Products Div. (IWA).	Everett, WA	2/4/85	1/25/85	TA-W-15,769	Lumber.
Wilker Brothers Co., Inc. (company)	McKenzie, TN	1/24/85	1/18/85	TA-W-15,770	Pajamas.
Wolverine World Wide, Factory C (UFCW)	Big Rapids, MI	2/7/85	1/22/85	TA-W-15,771	Shoes, puppie, hush, ladies.

[FR Doc. 85-5638 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Utah State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and of adoption of Subpart E to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval. By letter dated January 16, 1985, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's Occupational Exposure to Ethylene Oxide Provisions of General Industry Standards (29 CFR 1910.19 and 1910.1047 Occupational Exposure to Ethylene Oxide, 49 FR 25796, June 22, 1984.

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63-46-1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.19 and 1910.1047 Occupational Exposure to Ethylene Oxide was adopted by the Industrial Commission of Utah, Archives File Number 7450, on October 18, 1984, (effective November 1, 1984) pursuant to Title 35-9-6, Utah Code annotated 1953. The State Standard on Occupational Exposure to Ethylene Oxide is identical to the Federal standard action, with the only exception being paragraph numbering.

2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard and OSHA has determined that the State standard is identical to the Federal standard and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective January 31, 1985 (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 6671)).

Signed in Denver, Colorado this 31st day of January, 1985.

Byron E. Chadwick,

Regional Administrator.

[FR Doc. 85-5639 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Florida Power & Light Co., et al. (St. Lucie Plant, Unit No. 2); Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. NPF-16 issued to Florida Power & Light Company, the Orlando Utilities Commission of the City of Orlando, Florida, and the Florida Municipal Power Agency (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant, Unit No. 2 (the facility), located in St. Lucie County, Florida. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to allow operation of St. Lucie 2 at a power level of 2700 MWt.

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 Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 26, 1984 (49 FR 50131). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated November 21, 1984, (2) Amendment No. 9 to Facility Operating License No. NPF-16, 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, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of March, 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-5631 Filed 3-7-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23618; 70-7080]

General Public Utilities Corp. et al.; Notice of Proposal of Issuance, Sale and Renewal of Promissory Notes of Subsidiaries; Issuance and Pledge of First Mortgage Bonds

March 1, 1985.

General Public Utilities Corp. ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenburg Township, Berks County, Pennsylvania 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, (collectively the "GPU Companies"), have filed a declaration subject to sections 6(a), and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

The GPU Companies propose to issue, sell and renew to certain banks (the "Banks") from time to time through March 31, 1987, their respective promissory notes (the "New Notes") maturing not more than 180 days from the date of issue, pursuant to a new revolving credit agreement (the "New Credit Agreement"). Borrowings would be limited to an aggregate of $150 million, with individual sublimits of $10 million for the GPU and $50 million for Met-Ed. In the case of each of GPU Companies, the aggregate amount of New Notes issued and outstanding at any one time would not exceed such lesser amount, if any, as may be permitted by its respective charter.

The annual interest rate on each borrowing under the New Credit Agreement would be either (a) Citibank's Alternate Base Rate for GPU, JCP&L and Penelec, and ⅛ of 1% above Citibank's Alternate Base Rate for Met-Ed, (b) the domestic money market bid rate for certificates of deposit of various maturities ("DMM-Bid Rate" or "CD Rate"), plus 1⅝% for GPU, 1½% for JCP&L and Penelec, and 1¾% for Met-Ed. The maximum effective cost of borrowing for 1985 through 1987 as set forth in the declaration would be 14.925% for GPU, 14.8% for JCP&L and Penelec, and 15.05% for Met-Ed. In addition, the GPU Companies will pay the Banks an annual commitment fee of ½ of 1% of the unused commitment and an annual Agent's fee of $150,000.

Met-Ed proposes to pledge and grant to the Banks as collateral for its New Notes and other obligations under the New Credit Agreement, first priority security interest in Met-Ed's interest in (a) customer accounts receivable from the sale of electricity and (b) coal inventories. Moreover, Met-Ed proposes to issue and pledge to the Banks $40 million aggregate principal amount of First Mortgage Bonds ("Pledge Bonds") as further collateral. The Pledge Bonds will be issued pursuant to the Indenture, would mature on March 31, 1987, would carry an interest rate of 1% above the rate applicable to the New Notes, and would be payable only upon a default by Met-Ed under the New Credit Agreement.

The GPU Companies further propose from time to time through March 31, 1987, to issue or renew their respective unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. Each such unsecured promissory note will bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 120% of the lending bank's prime rate for commercial borrowing (12.6% assuming a 10.5% prime rate), will be prepayable at any time without premium and will not be issued as part of a public offering. The total principal amount of such unsecured borrowings outstanding at any one time when added to such Company's total principal amount of New Notes then outstanding would not exceed the lesser of (a) $165 million for JCP&L, $110 million for Penelec, and (b) the amount of short-term indebtedness permitted by such Company's charter to be outstanding at any one time. For Met-Ed, the sum of the total amount of such unsecured borrowings plus the total principal amount of New Notes, outstanding at any one time, will not exceed the lesser of (i) $90 million, and (ii) the amount of unsecured short-term indebtedness permitted by its charter to be outstanding at any one time. The total principal amount of unsecured borrowings outstanding at any one time for GPU, plus its total principal amount of New Notes then outstanding, will not exceed $10 million.

The net proceeds of the New Notes and the unsecured promissory notes proposed to be issued and sold would be used by the GPU Companies to repay maturing bank borrowings and to provide temporary working capital.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 25, 1985, to the Secretary, Securities and Exchange Commission, Washingon, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5567, Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23619; 70-6895]

Middle South Energy, Inc.; Notice of Proposed Interest Rate Swap Authorization

March 1, 1985.

Middle South Energy, Inc. ("MSE"), 225 Baronne Street, New Orleans Louisiana, 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2) and 50 thereunder.

By order dated November 15, 1983 (HCAR No. 23119), MSE was authorized to enter into one or more interest rate swap agreements ("Swap Agreements") at any time through December 31, 1984 in order to convert up to $378 million of its floating rate debit obligations to fixed rate obligations. As of December 31, 1984, MSE had entered into a Swap Agreement relating to $189 million of debt obligations. MSE is now proposing that the authorization of November 15, 1984 be extended to December 31, 1985.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 25, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the amended declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5568 Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21807; File Nos. SR-PSDTC-84-15; SR-PCC-84-13]

Self-Regulatory Organizations; Filing of Proposed Rule Changes of Pacific Clearing Corp. and Pacific Securities Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1984, the Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule changes described below. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would amend PSDTC's and PCC's Rules[1] to enable PCC and PSDTC staff to admit applicants for membership on a temporary basis pending review by PCC's or PSDTC's board of Directors.[2] To the eligible for temporary membership, an applicant would be required to have excess net capital of at least $100,000 and make a participant's fund deposit of at least $50,000.[3] Temporary approval could be made by two senior officers[4] of PCC or PSDTC or one such senior officer plus and officer from the Internal Audit Department of the Pacific Stock Exchange Inc., PCC's and PSDTC's parent corporation. In addition, temporary membership status would be effective only until the applicant was reviewed by PCC's or PSDTC's board or directors. Under the proposals, that board review must occur within 60 days after the applicant's first use of PCC or PSDTC services. Finally, PCC and PSDTC state in their filings that trading activity of temporary members would be monitored daily.

PCC and PSDTC state in their filings that the proposals are consistent with section 17A(b)(3) (B) and (f) of the Act because they will facilitate the admission of qualified applicants for membership and promote the use of PCC's and PSDTC's facilities for the clearance and settlement of securities transactions and the safeguarding of securities and funds.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at PCC's and PSDTC's principal offices.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, please send six copies of your comments to the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by March 29, 1985. Please refer to File Nos. SR-PCC-84-13 or SR-PSDTC-84-15 in your comments.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 4, 1985.

[FR Doc. 85-5569 Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* PSDTC Rule 2, Section 2(b); PCC Rule II, Section 2(b).

[2] PSDTC and PCC Rules currently require all applicants to be approved only by PSDTC's or PCC's board of directors.

[3] In conversations with Division of Market Regulation staff, PCC and PSDTC stated that candidates for temporary membership status would be required to meet all of PCC's and PSDTC's membership standards in addition to the proposed standards. *See*, PCC Rule 2, PSDTC Rule II, and PCC/PSDTC's Standards of Financial Responsibility and Operational Capability.

[4] PCC and PSDTC stated that "senior officers" under the proposals would be PCC's and PSDTC's President and Executive Vice President.

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; Philadelphia Stock Exchange, Inc.

March 1, 1985.

The Philadelphia Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(c) promulgated thereunder, to strike the common stock ($.10 par value) of Integrated Resources, Inc. (File No. 1-7030) from listing and registration thereon.

The reason alleged for striking this security from listing and registration include the following:

Integrated Resources, Inc. ("Company") states that "the Common Stock was initially listed on the Exchange in conjunction with their $3.07 Cum. Pfd. Stock. In order to be eligible to list the Conv. Pfd. Stock, the Company had to list their Common Stock because of the Pfd. Stock being convertible into the Common Stock. The Pfd. Stock was redeemed in 1983 and since they no longer have a Conv. Pfd. listed on the Exchange, combined with low trading volume, the Company feels it's no longer in their best interest to continue the listing of the Common Stock."

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on March 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5566 Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 42918; Order 85-3-4]

Intra-Alaska and Intra-Hawaii All-Cargo Authority in Domestic Section 401 Certificates; Order to Show Cause

Issued: March 4, 1985.

By orders 81-11-23 and 82-12-131 the Civil Aeronautics Board amended the basic form of section 401 domestic certificates to authorize the carriage of property and mail on passenger aircraft and all-cargo aircraft between *all* points in the United States, its territories and possessions. Previously, certificate holders could carry cargo only between specifically named points.

The 1981 amendment was subject to one qualification: All-cargo service within the states of Alaska and Hawaii would continue to be authorized only to named points. In a separate interpretive statement dated November 3, 1981, Docket 40208, the Board explained that this qualification stemmed from section 418(b)(3) of the Act, which prohibited the Board from granting unlimited authority for all- cargo air transportation in Alaska and Hawaii.

Section 418(b)(3) has now been repealed.[1] The Board in late 1984 acted to conform outstanding section 418 domestic all-cargo certificates to the new statutory regime.[2] We now propose to take the corresponding step with regard to domestic section 401 certificates.

We share the Board's assessment that the repeal of section 418(b)(3), along with the amendment to the statutory definition of "all-cargo air service" in section 101(11) of the Act, manifests a Congressional intent that Alaska and Hawaii should be extended the full benefits of deregulation with respect to all-cargo services. We thus tentatively find and conclude that it is consistent with the public convenience and necessity that all outstanding domestic section 401 certificates authorizing the holder "to engage in the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions" but containing a condition prohibiting such air transportation between points wholly within the States of Alaska and Hawaii (unless specifically authorized), should be amended to remove the condition prohibiting all-cargo air transportation within Alaska or Hawaii, and further amended to remove, as no longer necessary, any specific authorization for points within Alaska or Hawaii.

Since we are proposing this action on our own initiative, we have decided to allow for a brief comment period. We shall provide interested persons within 14 days from the service date of this order to submit comments or objections. Answer will be due 10 days thereafter.

Accordingly,

1. We direct all interested persons to show cause why we should not make final our tentative findings and conclusions and implement the section 401 certificate amendments indicated above;

2. Properly supported objections may be filed within 14 days of the date of service of this order, i.e. by March 21, 1985; Answers may be filed 10 days thereafter, i.e. by April 1, 1985;

3. If no timely objections are filed, all further procedural steps will be deemed to have been waived, and we will issue an order making final our tentative findings and conclusions and amending the certificates in question;

4. This order shall be served on all certificated air carriers; and

5. This order shall be published in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-5600 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-62-M

[1] Section 9(a) of the CAB Sunset Act of 1984. Pub. L. 98-433, 98 Stat. 1703, October 4, 1984.

[2] Orders 84-11-90 and 84-12-118.

[Order 85-3-9; Docket Nos. 42542, 42543]

Application of Pegasus Airlines, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order of show cause.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue orders finding Pegasus fit and awarding it certificates of public convenience and necessity to engage in scheduled interstate/overseas and foreign air transportation; denying the applicant's motion to withhold certain information from public disclosure; and denying a request by Pegasus Air Transport Company that the application of Pegasus be denied or, alternatively, deferred pending a change of the applicant's name.

DATES: Persons wishing to file objections shall do so no later than March 21, 1985; answers to objections shall be filed no later than April 1, 1985.

ADDRESS: Objections and answers to objections should be filed in Dockets 42542 and 42543 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116L, Washington, D.C. 20590, (202) 426-7631.

Dated: March 4, 1985.

Matthew V. Soocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-5601 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

Essential Trade Routes; Intent To Redesignate

Under section 211(a) of the Merchant Marine Act, 1936, as amended, the Maritime Administrator is authorized and directed to investigate, determine, and keep current records of the ocean services, routes, and lines which are or may be determined by the Maritime Administrator to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States.

Determinations of essential U.S. foreign trade routes were made as early as 1930 to assist in administering the Merchant Marine Act of 1928 and to deal with problems in relation to ocean mail contracts. The essential trade routes became an important keystone of the Merchant Marine Act, 1936, by restricting the payments of subsidies to ships which are to be used in an essential service in the foreign commerce of the United States. There have been no substantial changes in essential trade route descriptions since enactment of the Merchant Marine Act, 1936, other than inclusion of the U.S. Great Lakes.

In recent years there have been major changes in shipping technology and U.S. trade patterns. The development of the line-haul/feeder and intermodal services has allowed companies to serve much broader trade areas than was possible in 1936. Thus, it is the intent of the Maritime Administrator to consolidate the present essential trade routes and essential trade areas into eight essential trade areas (described below), in order to reflect more realistically the current pattern of vessel operations.

It is proposed that upon consolidation of essential trade routes as contemplated herein, the Maritime Subsidy Board may proceed, upon the request of any subsidized operator, to amend such operator's ODSA so as to conform such Agreement to these essential trade areas by the provision for such service. In order to accomplish these modifications, it is expected that the Board will rely upon the authority provided for in the Agreements which permit amendment by mutual consent, as well as its authority in sections 606(3), 204 and 605(c) of the Act, as may be applicable. In any amendment to the ODS contract implementing the trade area concept, the Government will not agree to any increase in ODS subsidy over the most recent baseline, updated as necessary, as a result of those amendments.

Proposed Trade Areas[1]

Between the United States (the contiguous United States plus Alaksa and Hawaii) and:

(1) Europe and Mediterranean.
(2) Far East.
(3) East Coast of Central and South America (including Caribbean).
(4) West Coast of Central and South America.
(5) South and East Africa.
(6) West Coast of Africa.
(7) Australasia.
(8) Middle East and South Asia.

A detailed discussion of the factors which lead to the proposal to consolidate trade routes is contained in an Agency study "Reevaluation of U.S. Liner Trade Routes." This study is available upon request.

The Maritime Administration invites comments on the proposed trade route redesignation and background study. Interested persons are invited to submit comments on or before April 22, 1985. Written comments and requests for the study should be addressed to U.S. Department of Transportation, Maritime Administration, Director, Office of Trade Studies and Subsidy Contracts, Room 8117, 400 7th Street SW., Washington, D.C. 20590. For further information contact: Edmond J. Fitzgerald (202) 382-0374. Prior to any contract negotiation based on final determinations of new essential trade routes and essential trade areas, the Maritime Administrator will publish the final determination.

(Catalog of Federal Domestic Assistance Program No. 20.804) Operating-Differential Subsidies (ODS))

Date: March 5, 1985.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 85-5556 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes April 10, 1985.

ADDRESS: *Comments to:* Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9389-N	Chilean Nitrate Sales Corporation, Norfolk, VA.	49 CFR 172.301(a), Part 107, Appendix B	To authorize shipment of approximately 360,000 bags, containing sodium nitrate or nitrate, n.o.s., which are not marked with the proper shipping name and identification number. (Modes 1, 2.)

[1] Countries included in the proposed trade areas are described in general in the Bureau of Census, U.S. Foreign Trade Statistics, Classification and Cross-Classifications, 1980, Section 15, Schedule R—Code Classification and Definitions of Foreign Trade Areas.

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9391-N	Dowell Schlumberger, Inc., Tulsa, OK	49 CFR 172.101(6)(b), 175.30	To authorize shipment of hydrochloric acid, classed as a corrosive material in 3,100 gallon capacity DOT Specification 60 rubber lined portable tanks in the State of Alaska only. (Mode 4.)
9392-N	Steigerwalt Associates, Allentown, PA	49 CFR 173.301(b), 178.42	To manufacture, mark and sell non-DOT specification steel cylinders comparable to DOT Specification 3E, for shipment of carbon dioxide, nonflammable gas. (Modes 1, 2, 3.)
9393-N	Sexton Can Company, Inc., Everett, MA	49 CFR 173.304, 178.65	To manufacture, mark and sell non-DOT specification nonreusable steel containers, patterned after DOT Specification 2Q, for shipment of (mono) chlorofluoromethane (R-22) classed as nonflammable gas. (Mode 1.)
9395-N	Overland Tank & Trailer Mfg. Inc., Abilene, TX	49 CFR 173.119(a), (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids. (Mode 1.)
9396-N	CIBA-GEIGY Corporation, Ardsley, NY	49 CFR 173.346	To authorize shipment of nitrochlorobenzene, ortho, classed as a poison B liquid in DOT Specification 57 steel portable tanks of 345 gallon capacity with the bottom outlet valve permanently plugged. (Mode 1.)
9397-N	Austin Powder Company, Cleveland, OH	49 CFR 173.77	To authorize shipment of pentaerythrite tetranitrate (PETN) wetted with not less than 25% water contained in either plastic or rubberized textile bags over packed in specially constructed fiber drums. (Mode 1.)
9398-N	Chemical Commodities, Inc., Olathe, KS	49 CFR 173.127	To authorize shipment of nitrocellulose wet with water contained in 250 pound capacity DOT Specification 21P fiber drum with a 4 mil polyliner to be loaded in a freight container. (Modes 1, 3.)
9399-N	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification girth welded stainless steel pressure vessel patterned after a DOT Specification 3HT, for shipment of nitrogen classed as a nonflammable gas. (Modes 1, 2, 3.)
9400-N	Poly Processing Company, Inc., Monroe, LA; Poly Cal Plastics, Inc., French Camp, CA	49 CFR 173.266, 173.268, Part 173, Subpart D, Subpart F.	To manufacture, mark and sell non-DOT specification portable polyethylene sphere tanks mounted on and partially enclosed in a steel unit, for shipment of certain oxidizers and certain corrosive and flammable liquids authorized in DOT Specification 34 and 57 containers. (Modes 1, 2, 3.)
9401-N	Fauvet-Girel, St. Laurent-Blangy, France	49 CFR 173.315	To offer non-DOT specification portable tanks built to DOT Specification 51 except for ASME Code Certification, for shipment of various nonflammable compressed gases (refrigerants). (Modes 1, 2, 3.)
9402-N	Fauvet-Girel, St. Laurent-Balngy, France	49 CFR 173.315	To offer non-DOT specification portable tanks built to DOT Specification 51 except for ASME Code Certification, for shipment of various nonflammable and flammable compressed gases. (Modes 1, 2, 3.)
9403-N	Schulmberger Well Services, Houston, TX; Schlumberger Offshore Service, Houston, TX.	49 CFR 173.110, 173.80	To authorize carriage of charged well casing jet perforating guns by specialized common motor carriers rather than by privately owned and operated motor vehicles. (Mode 1.)
9404-N	Luxfer USA Limited, Riverside, CA	49 CFR 173.302, 173.304, 178.46	To manufacture, mark and sell aluminum cylinders complying with DOT Specification 3AL except for a modified base shape, for shipment of those hazardous materials authorized in DOT Specification 3AL. (Modes 1, 2, 3, 4.)
9405-N	M&G Tankers Limited, West Midlands, England.	49 CFR 173.119	To manufacture, mark and sell non-DOT specification fiber reinforced plastic cargo tanks, mounted on a truck chassis, for transportation of gasoline, aviation fuel, and certain other flammable liquids. (Mode 1.)
9406-N	Imperial Plastics, Evansville, IN	49 CFR 173.217(a)	To manufacture, mark and sell non-DOT specification removable head polyethylene pails for shipment of certain oxidizers (solids). (Modes 1, 2, 3.)
9407-N	Eastman Kodak Company, Rocherster, NY	49 CFR 173.204(d)	To authorize use of shipping papers bearing a preprinted shippers certificate. (Modes 1, 2, 3, 4, 5.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-5597 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes March 26, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No.	Applicant	Renewal of exemption
1862-X	Greer Hydraulics, Inc., City of Commerce, CA.	1862

Application No.	Applicant	Renewal of exemption
4177-X	Hydrodyne Industries, Inc., Hauppauge, L.I., NY.	4177
4262-X	Schlumberger Offshore Services, Houston, TX.	4262
4262-X	Schlumberger Well Services, Houston, TX.	4262
4884-X	Ashland Oil, Inc., Columbus, OH	4884
6151-X	Virginia Chemicals, Inc., Portsmouth, VA.	6151
6184-X	Air Products and Chemicals, Inc., Allentown, PA.	6184
6531-X	Tavco, Inc., Chatsworth, CA	6531
6557-X	General Fire Extinguisher Corporation, Northbrook, IL.	6557
6759-X	Hercules, Incorporated, Wilmington, DE	6759
7227-X	Richmond Lox Equipment Company, Livermore, CA [1].	7227
7526-X	Schering, AG, West Berlin, West Germany.	7526
7719-X	Turner Company, Sycamore, IL [2]	7719
7879-X	Gearhart Industries, Inc., Fort Worth, TX.	7879
8053-X	Eastman Kodak Co., Rochester, NY	8053
8066-X	Boeing Aerospace Co., Seattle, WA	8066
8129-X	Aqua-Tech, Inc., Port Washington, WI	8129
8129-X	Virginia Polytechnic Institute & State University, Blacksburg, VA.	8129
8129-X	Acurex Corp., Mountain View, CA	8129
8129-X	Ecotlo, Inc., Bladensburg, MD	8129
8129-X	University of California, Davis, Davis, CA.	8129
8129-X	McKesson Corporation, Dublin, CA	8129
8129-X	Borg-Warner Chemicals, Inc., Parkersburg, WV.	8129
8129-X	Loma Linda University, Loma Linda, CA.	8129
8129-X	GSX Services, Inc., foremerly Triangle Resources, Laurel, MD.	8129
8129-X	McDonnell Douglas Corp., Saint Louis, MO.	8129
8129-X	Findly Chemical Disposal, Inc., Riverside, CA.	8129
8151-X	Ropak West, Inc., La Mirada, CA	8151
8152-X	Allied Corporation, Morristown, NJ	8152
8208-X	Jet Propulsion Laboratory, Pasadena, CA.	8208
8451-X	Stresau Laboratory, Inc., Spooner, WI	8451
8511-X	Interox America, Houston, TX	8511
8511-X	Interox America, Houston, TX	8511
8585-X	Bergen Barrel and Drum Company, Kearny, NJ.	8585
8679-X	MicroD International, Burnsville, MN	8679
8725-X	CNG Cylindar Corporation, Long Beach, CA [3].	8725
8859-X	AVM Corporation, Pittsburgh, PA	8859
8888-X	Nalco Chemical Company, Oak Brook, IL [4].	8888
8910-X	Canbar Products Limited, Waterloo, Ontario, Canada.	8910
8969-X	McDonnell Douglas Corp., Saint Louis, MO.	8969
8998-X	Oil Air Industries, Inc., Brookshire, TX	8998
8999-X	Scott Aviation Div. of Figgie International, Inc., Lancaster, NY.	8999
9010-X	United Technologies Chemical Systems, San Jose, CA.	9010
9011-X	Van Leer Containers, Inc., Chicago, IL	9011
9024-X	Slemi, Paris, France	9024
9024-X	Fauvet-Girel, St Laurent Blangy, France.	9024
9036-X	The Marison Company, South Elgin, IL	9036
9180-X	M & G Tankers Limited, West Midlands, England [5].	9180
9222-X	Bryson Industrial Services Inc., Lexington, SC [6].	9222

[1] To authorize an additional portable tank of 1920 gallon capacity.
[2] To authorize cargo aircraft only as additional mode of transportation.
[3] To authorize certain flammable and nonflammable gases as additional commodities.
[4] To authorize additional cleaning or water treating compounds.
[5] To include gasoline blended with either methanol or ethanol as an additional commodity.
[6] To expand travel distance by changing points of origination and destination.

Application No.	Applicant	Parties to exemption
6610-P	Akzo Chemie America, Chicago, IL	6610
6762-P	Kem Manufacturing Corporation, Tucker, GA.	6762
6762-P	Nutmeg Chemical Company, New Haven, CT.	6762
6772-P	Thomas Gray & Associates, Inc., Orange, CA.	6772
6806-P	Stone & Webster Engineering Corporation, Boston, MA.	6806
7951-P	Beatrice Cheese, Inc., New Berlin, WI	7951
8009-P	MCF Services, Inc., Golden, CO	8009
8129-P	Washington State University, Pullman, WA.	8129
8129-P	University of California, Riverside, Riverside, CA.	8129
8445-P	Thomas Gray & Associates, Inc., Orange, CA.	8445
8526-P	Johnson & Bloy Canada Inc., Prescott, Ontario.	8526
8526-P	Birko Corporation, Westminster, CO	8526
8958-P	Track of the Wolf, Inc., Osseo, MN	8958
9110-P	QueNord Inc., Magog, Quebec, Canada.	9110
9271-P	Burlington Northern Railroad, Ft. Worth, TX.	9271
9271-P	The Denver and Rio Grande Western Railroad Company, Salt Lake City, UT.	9271

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on March 4, 1985.

J. R. Grothe,

Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-5596 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 13, 1985.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Chlorocarbons: Status/Options.

The staff will brief the Commission on the status of the priority project Chlorocarbons and options concerning the consumer use survey.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 5, 1985.

[FR Doc. 85–5676 Filed 3–6–85; 1:58 pm]

BILLING CODE 6355–01–M

2

COUNCIL ON ENVIRONMENTAL QUALITY

TIME AND DATE: 10:00 a.m. Monday, March 18, 1985.

PLACE: Conference Room, first floor, 722 Jackson Place, NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

1. On December 31, 1984, the Council on Environmental Quality published an Advance Notice of Proposed Rulemaking, (49 FR 50744), announcing that it was considering the need to amend the regulation entitled "Incomplete or unavailable information" (40 CFR 1502.22). That notice included a solicitation of written comments with respect to certain questions concerning the subject rule. The Council received many letters of comment in response to the notice and the Chairman and Members are each reviewing the comments. The purpose of the meeting is for the Council to discuss the contents of the responses received. Discussion will be limited to the Council and staff.

2. Other business.

A. Alan Hill,

Chairman.

March 5, 1985.

[FR Doc. 85–5643 Filed 3–5–85; 5:00 pm]

BILLING CODE 3125–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 4, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application for assistance under section 13(i) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Application of Pendleton Banking Company, Pendleton, Indiana, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the State Bank of Lapel, Lapel, Indiana, and to establish the two offices of The State Bank of Lapel as branches of Pendleton Banking Company.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,167–L (Amended).
The First National Bank of Midland, Midland, Texas

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: March 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–5689 Filed 3–6–85; 8:45 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 4, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the augmenting of the Corporation's Washington, D.C., housing facilities.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–5690 Filed 3–6–85; 12:30 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Friday, March 1, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase

of certain assets of and the assumption of the liability to pay deposits made in Halifax National Bank of Port Orange, Port Orange, Florida, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, March 1, 1985; (2) accept the bid for the transaction submitted by Barnett Bank of Volusia County, De Land, Florida, an insured State nonmember bank; (3) approve the application of Barnett Bank of Volusia County, De Land, Florida, for consent to purchase certain assets of and to assume the liability to pay deposits made in Halifax National Bank of Port Orange, Port Orange, Florida, and to establish the three offices of Halifax National Bank of Port Orange as branches of Barnett Bank of Volusia County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-5691 Filed 3-6-85 12:30 am]

BILLING CODE 6714-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 13, 1985, following a recess at a conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. 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: March 5, 1985.

James McAfee

Associate Secretary of the Board.

[FR Doc. 85-5664 Filed 3-7-85; 11:12 am]

BILLING CODE 6210-10-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Federal Reserve Board response to the Federal Trade Commission's rule on sale of used motor vehicles.

Discussion Agenda:

2. Publication for comment of a proposed amendment to Regulation G (Securities Credit by Persons Other Than Banks, Brokers, or Dealers) to permit G-lenders to extend credit to employee stock ownership trusts on a good-faith basis. (Docket No. R-0529)
3. Publication for comment of proposed amendments to Regulations G, T, and U (Securities Credit Transactions) which would exclude loans on face-amount certifcates from margin rules.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5665 Filed 3-6-85; 11:12 am]

BILLING CODE 6210-01-M

federal register

Friday
March 8, 1985

Part II

Environmental Protection Agency

40 CFR Part 58

Ambient Air Quality Surveillance; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD-FRL 2742-5]

Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency.

ACTION: Proposed revision.

SUMMARY: EPA proposes to amend provisions of Part 58 of Chapter 1 of Title 40 of the Code of Federal Regulations to take into account the suggestions offered by State and local air pollution control agencies through the Standing Air Monitoring Work Group (SAMWG) mechanism and the operating experience of State and local agencies, EPA Regional Offices and EPA Headquarters personnel over the last 5 years. Salient changes proposed include: provisions to use most current census population figures to estimate air monitoring network size, allowing 120 days instead of 90 days to submit National Air Monitoring Stations (NAMS) Quarterly data to the National Air Data Bank, to require reporting organizations to submit the results of each individual precision and accuracy test, and to modify network design and siting requirements.

DATE: Comments must be submitted on or before May 7, 1985.

ADDRESS: Submit comments (duplicate copies are preferred) to: Central Docket Section, U.S. Environmental Protection Agency, Attn: Docket No. A-84-28, 401 M Street, SW., Washington, D.C. 20460. Docket No. A-84-28 is located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M St., SW., Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on week days and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Neil Berg or Stanley Sleva, Monitoring and Data Analysis Division (MD-14), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle, Park, N.C. 27711, phone: 919-541-5651 or (FTS) 629-5651.

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(C) of the Clean Air Act requires ambient air quality monitoring for purposes of the State Implementation Plans (SIP's) and for reporting air quality data to EPA. Criteria to be followed when measuring air quality and provisions for daily air pollution index reporting are required by Section 319 of the Act. To satisfy these requirements, on May 10, 1979 (44 FR 27558), EPA established 40 CFR Part 58 which provided detailed requirements for air quality monitoring, data reporting, and surveillance for all of the pollutants for which ambient air quality standards have been established (criteria pollutants) except lead. On September 3, 1981 (44 FR 27558), similar rules were promulgated for lead. On March 20, 1984, similar rules were proposed for PM_{10} and for TSP as a secondary standard.

The regulations in this notice deal with changes to the ambient air quality monitoring, data reporting, and surveillance requirements of 40 CFR 58 based on the experience of State and local agencies, EPA Regional Offices, and EPA Headquarters personnel during the past 5 years.

Proposed Revisions to Part 58—Ambient Air Quality Surveillance

Section 58.1 Definitions.

The revisions proposed today would change the definition of urban area population from the 1970 census to that of the most current decennial census figures. The most current decennial census figures are in the "1980 Census of Population" U.S. Department of Commerce, Bureau of the Census PC 80-1-A1, U.S. Government Printing Office, Washington, D.C., April 1982. There has been an increase of 91 in the number of urbanized areas greater than 50,000 since the 1970 census. The greatest increase (64 urban areas) occurred in the 50,000 to 100,000 population category. The 1970 census showed 275 urban areas and the 1980 census shows 366.

Section 58.35 NAMS data submittal.

The current monitoring regulations specify that all NAMS data be submitted in quarterly reports to the National Air Data Bank within 90 days of the end of each reporting period. This requirement would be changed to 120 days to allow States and Regional Offices more time to throroughly validate the data prior to submitting to the National Air Data Bank.

Analysis of the past three years indicate that 64% of the States report NAMS data within the 90 day period while 95% of the States report within the 120 days period.

Section 58.40 Index reporting.

The revisions proposed today would make the population of urban areas for purposes of Air Quality Index Reporting compatible with the definition of urban area population found in Section 58.1 Definitions. This would increase the number of urban areas required to report a PSI from 105 to 115.

Revisions to Appendix A

Appendix A prescribes minimum quality assurance and specific quality assessment requirements applicable to SLAMS air monitoring data submitted to EPA. Some changes are being proposed to these requirements, primarily in the requirements for reporting the assessment data to EPA. These changes should have a minor, if any, economic impact on monitoring agencies. A more significant change under consideration by EPA to increase the auditing frequency for automated analyzers and particulate matter samplers is not being proposed at this time because of concern about the substantial impact it would have on some agencies. Comments are solicited on any of these issues, which are discussed more fully below.

Air quality data collected from National Air Monitoring Stations (NAMS) and State and Local Air Monitor Stations (SLAMS) are used for a variety of purposes by a number of public agencies, including State and local air pollution control agencies, the Environmental Protection Agency (EPA), the Council of Environmental Quality (CEQ), other Federal agencies, and the Congress, as will as organizations in the private sector. State and local agencies use the data principally for determining compliance with air quality standards, developing State implementation plans, achieving and maintaining air quality, maintenance planning, and reviewing new sources. On the national level, these data are used for regulatory development, re-evaluating the national air quality standards, evaluating State implementation plans, studying air quality trends, estimating health risks, and developing health risk models.

Assessments of the quality of the NAMS and SLAMS data provide these data users with estimates of the accuracy (degree of bias) and precision (variability) of the monitoring data. Such information is essential to the application of the monitoring data to the various objectives. Subsequent to the original establishment of the assessment requirements in 1979, the uses of the data quality information have been re-evaluated, and the specific needs for such information have been refined. The changes in the data assessment requirements being proposed today are intended to improve and expand the usefulness and value of the data quality estimates associated with the NAMS and SLAMS monitoring data.

The most significant change proposed is a change in the reporting requirements for data quality assessments. Under the existing Appendix A requirements, data quality (precision and accuracy) measurements are combined and reported on an integrated "reporting organization" basis. These reporting organizations are State-level agencies or subordinate organizations within a State for which pooled precision and accuracy assessments serve to inform a data user of the overall data quality being achieved by the reporting organization as a whole. The present reporting system does not now provide available data quality indicators for specific individual monitors or monitoring sites.

It is proposed, instead, to require reporting organizations to submit to EPA the results from each individual precision and accuracy test. EPA would then calculate and report the same type of integrated precision and accuracy assessments representative of each reporting organization as are now calculated and reported by the States. More importantly, precision and accuracy information would then be available for each individual monitoring site.

Access to these individual precision and accuracy test results would allow EPA to analyze data quality at specific sites, in specific areas, for specific methods or analyzers, under specific conditions, etc. This additional information will greatly improve the description of the quality of specific blocks of monitoring data, an important benefit for the data user in many instances. For example, more detailed accuracy data directly associated with the pollutant measurements would be very useful in developing and issuing air quality criteria that are to reflect the latest scientific information concerning air pollutants and their effects on public health or welfare. Similarly, other data uses, such as trends anaysis, development of national policies, and research studies, would benefit significantly when site-specific accuracy and precision of the measurement data are known.

This change in reporting should have only a minor impact on monitoring agencies, which would no longer have to carry out the calculations of integrated precision and accuracy estimates for each reporting organization according to the procedures currently specified in Section 4 of Appendix A. The agencies would simply forward the individual results of the precision and accuracy tests directly to EPA. The calculation procedures would still be retained (in Section 5 of the proposed revised Appendix A) to indicate how EPA will calculate the integrated precision and accuracy estimates. Reporting organizations could also continue to calculate the integrated precision and accuracy estimates for use in their own quality assurance programs, even though these estimates would not be reported to EPA.

New forms and data formats are proposed for reporting the individual precision and accuracy test data to EPA. Figures A–1 and A–2 are generalized reporting forms, while Figures A–3 and A–4 are site and method specific reporting forms. Specific comments are solicited as to whether both types of forms are necessary, and if not, which type is preferable or what changes might be beneficial. The new reporting requirements are proposed as Section 4 in the revised Appendix A and include instructions for using the proposed reporting forms.

Another change concerns the procedure in Section 3 for auditing automated analyzers for NO_2. It is proposed to require that NO_2 audit gases for chemiluminescence-type NO_2 analyzers also contain $0.1 \pm .02$ ppm of NO. This requirement is intended to provide a more realistic test of the NO_2 analyzer under conditions that simulate a typical ambient air mix on NO and NO_2, and it is consistent with current NO_2 audit recommendations to be incorporated into Volume II of the Quality Assurance Handbook (Reference 3 of Appendix A).

Some minor changes are proposed in the number of collocated monitoring sites required for assessing the precision of manual monitoring methods. As proposed, the number of collocated sites required for each manual method used would depend on the number of sites in the network and would be 1, 2, or 3 sites for 1–5, 6–20, or over 20 network sites, respectively. It is further proposed that these collocated-sampler precision assessment requirements also apply to lead measurements, replacing the current requirement for analysis of duplicate filter strips for lead. Although many agencies may have to add one or two additional samplers (mostly for lead), the overall impact of these changes should be small because of the small number of collocated sites required for each monitoring network.

Another minor change is proposed in the computation of precision from collocated measurements (Section 5.3 of the revised Appendix A). The calculation of percent difference would be referenced to the average of the two collocated measurements (equation 10) rather than to the measurement from the primary sampler. The reason for this change is that even though only the primary sampler is used for routine measurements, the two collocated measurements are obtained with identical samplers under identical conditions. The average of the two measurements provides the best estimate of the true value. It is therefore statistically more correct to use the average of the two measurements rather than only one of them as the reference for determining the percent difference.

Some very minor changes are also proposed to the general quality assurance requirements in Sections 1 and 2. The language of Sections 1 and 2 would be revised slightly, and a few additional items (training, selection and control of calibration standards, and data quality assessment) are proposed to be added to the list of activities required for quality assurance plans in Section 2. These changes are to augment and clarify the provisions and descriptions of these sections. It is not intended that all quality assurance plans approved under the current language of Section 2 would have to be amended immediately to address the new items. Rather, plans that do not already include procedures for the new activities may be updated as part of the agency's normal, ongoing program to review and modify its quality assurance procedures or in conjunction with an annual EPA systems audit as identified in Section 2.4. A minor related change proposed in Section 3 would clarify that all definitions of reporting organizations must be approved by the appropriate EPA Regional Office.

Numerous other wording changes and revisions in the language have also been made throughout the proposed revised text of Appendix A to improve, clarify or update various provisions, and a new table (Table A–1) is added to summarize the minimum quality assessment requirements of Appendix A.

It should be noted that other changes or revisions to Appendix A (as well as Appendix B) were previously proposed on March 20, 1984 (49 FR 10442) to incorporate provisions applicable to methods for monitoring PM_{10}. Those amendments are still pending. In general, provisions proposed in March for PM_{10} methods are similar or identical to current provisions for TSP or other manual methods. The changes proposed to the current provisions are intended to apply also to PM_{10} methods when the PM_{10} amendments are promulgated. Where possible, the PM_{10} provisions are proposed to be consolidated with provisions for TSP and other similar methods, and applicability to PM_{10}

methods would be affected by use of generic terms such as "particulate matter method" or "particulate matter sampler," which are intended to apply to both TSP and PM_{10} methods. Specific references to PM_{10} are enclosed in brackets [ ] to indicate that the provision would be included only upon promulgation of the PM_{10} amendments package.

As noted in the first paragraph, EPA is considering a future requirement for the more frequent auditing of automated analyzers and particulate matter samplers. From evaluation of the applications and utility of the SLAMS data quality assessment information, EPA is very concerned that the currently required one-per-year audit of these analyzers and samplers is not sufficient to adequately characterize the true quality of the ambient data in all cases. EPA believes that auditing each of these devices every calendar quarter would provide more representative assessments of the data quality. Quarterly audits, together with the presently proposed change to report individual audit results, would make available more detailed and useful information concerning specific sites or specific blocks of ambient monitoring data. Also, quarterly audits would provide sufficient information to assess the precision of automated analyzers, thereby obviating the need for continued reporting of the results from the biweekly precision checks.

Many State and local pollution control agencies have submitted advance comments on this issue. These advance comments from affected agencies indicate sharply polar positions on this matter. Ten State or local agencies reported that they are already auditing all of their analyzers every quarter, and six additional agencies reported that implementation of a quarterly audit program would not be a problem. These agencies support a quarterly audit requirement—some very strongly, corroborating EPA's belief that quarterly audits are necessary to adequately assess data quality and indicating that such a requirement is overdue. Seven other agencies indicated general agreement with the need for more frequent audits but expressed concern about obtaining additional resources necessary to implement quarterly audits.

At the opposite pole, approximately 20 agencies opposed a quarterly audit requirement—some very strongly and profusely—indicating that a substantial amount of additional resources would be needed and suggesting that in the presence of an effective quality assurance program, more frequent auditing of analyzers was not necessary and may even be detrimental if it diverts resources from other quality assurance efforts.

In view of the considerable adverse impact that would be caused on some agencies and the current general unavailability of additional resources, EPA has decided not to propose an increase in the audit frequency at this time. But EPA seeks additional comments on this issue for further study, and proposal of a more frequent audit requirement will be reconsidered in the future. All comments previously received from State and local monitoring agencies will be retained and reconsidered together with the additional comments received in connection with this proposal. Therefore, those agencies need not resubmit the same comments. New comments, of course, are welcome.

Amendments to Appendix B

Appendix B prescribes minimum quality assurance and quality assessment requirements applicable to air monitoring data submitted to EPA in connection with the regulations for Prevention of Significant Deterioration (PSD). Sections 1 and 2 are proposed to be revised, corresponding to revisions to Sections 1 and 2 of Appendix A, to incorporate editorial changes to the language and additional items to be addressed in the required quality assurance plans. Because of the number of minor changes, the entire texts of Section 1 and Sections 2.1 and 2.2 are being reproposed. Also, minor corrections or wording changes are proposed to Section 2.3, and a new introductory paragraph is proposed to be added to Section 3.

A proposed change in Section 3.2 would require that NO_2 audit gases for auditing chemiluminescence-type NO_2 analyzers also contain approximately 0.1 ppm of NO. Another proposed change, in the Section 5 procedure for calculating precision from collocated measurements, provides that the percent difference would be referenced to the average of the two measurements rather than to the measurement from the primary sampler. A new equation (1a) is added for this purpose. Finally, the References section is revised to incorporate corrections and updated information, and a new table summarizing the minimum quality assessment requirements in Appendix B is proposed to be added. These changes are all similar to corresponding changes proposed for Appendix A and are based on the same rationale discussed in connection with Appendix A.

Revisions to Appendix C

Appendix C stipulates the types of monitoring methods that may be used in State air quality monitoring networks. Sections 2.4 and 2.5 are proposed to be revoked and reserved because these sections are obsolete and unnecessary. Also, Section 2.6.1 is proposed to be revoked and reserved because it has expired and is not longer pertinent. The title of Section 2.6 would be changed to reflect the revocation of Section 2.6.1. These changes would have no impact on monitoring agencies.

Revisions to Appendix D

The revisions to Appendix D proposed today would revise Section 2.5 to address the possible scavenging effect of trees on ozone at middle scale sites and to change the requirements for ozone monitoring to correspond with the ozone season as determined on a State by State basis and designated in the Storage and Retrieval of Aerometric Data (SAROAD) files.

In Section 3.2, dealing with SO_2 NAMS network design criteria, Table 3 is changed to make it compatible with the criteria proposed for PM_{10} and for the TSP secondary standard. The minimum urban area size requiring NAMS has been raised from 50,000 to 100,000, and a 4th population category of those urban areas greater than 1,000,000 has been added. Also, the range of required monitors has been broadened, especially in large areas of high concentration. This will better meet the national data needs of the Agency.

In Sections 3.3, and 3.5, dealing with design criteria for NAMS for CO, and NO_2 respectively, the criteria would be revised to allow a middle scale site for NAMS. This change would make the design criteria compatible with the existing criteria for Pb and the proposed criteria for PM_{10} and TSP. Also, this change would be consistent with using the objective of the monitoring to determine the location of the site rather than letting the required scale of representativeness dictate site location. This change should allow the site to be identified in terms of the most appropriate scale of representativeness. Middle scale sites would be allowed to fulfill category (a) requirements for TSP, PM_{10} Pb, SO_2, and NO_2. Middle scale sites would be allowed to fulfill category (b) requirements for CO. Table 5, Summary of Spatial Scales for SLAMS and NAMS would be revised to accommodate all of these revisions to the allowable scales.

Revisions to Appendix E

The revisions to Appendix E proposed today would add a specific section entitled "Spacing from Trees and Other Considerations" to each of the 7 criteria pollutant sections, including the section on PM_{10} which was proposed on March 20, 1984. Although the new sections deal with trees as reacting surfaces, adsorbing surfaces, obstructions to wind flow, and in some cases emitters of particulate matter (pollen), the only change proposed at this time is the addition of "from the dripline" to the statement "should be set back 20 meters from trees" and the requirement that the probe must be 10 meters from the dripline when trees act as an obstruction or produce pollen in significant quantities. EPA solicits input from State and local agencies and other organizations concerning their monitoring experiences with situations where trees may or may not unduly bias the air quality data. EPA welcomes pollutant specific information or monitoring data which could indicate whether or not trees are a cause for concern in selecting monitoring locations. Based on the comments and/or data received during the comment period, the final rules resulting from today's proposal may include additional or fewer restrictions concerning trees.

Revisions to Appendix G

The revisions to Appendix G proposed today would leave to the discretion of the reporting agency the requirement to measure and report the Pollutant Standard Index (PSI) in those cases where the PSI as calculated by the critical pollutant has not exceeded a value of 50 during the previous calendar year.

Impact on Small Entities

The Regulatory Flexibility Act requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by the proposal. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

Since this revision is classified as minor, no additional reviews are required.

The proposed revisions to Part 58 were submitted to the Office of Management and Budget (OMB) for review (under Executive Order 12291). This is not a "major" rule under E.O. 12291 because it does not meet any of the criteria defined in the Executive Order.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, D.C. 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 58

Air Pollution Control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Pollutant standard index, Ambient air quality monitoring network.

(Secs. 110, 301(a) and 319, Clean Air Act, 42 U.S.C. 7410, 7801(a), 7819)

Dated: February 20, 1985.

Lee M. Thomas,

Administrator.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

For the reasons set forth in the Preamble, Part 58 of Chapter I of Title 40 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. Section 58.1 is amended by revising paragraph (s) to read as follows:

§ 58.1 Definitions.

* * * * *

(s) "Urban area population" means the population defined in the most recent decennial U.S. Census of Population Report.

2. Paragraph (c) of Section 58.35 is revised to read as follows:

§ 58.35 NAMS data submittal.

* * * * *

(c) * * *

(1) Be received by the National Air Data Bank, after being submitted by the States to the Regional Offices for review, within 120 days of the end of each reporting period, and

3. Section 58.40 is amended by revising paragraph (c) to read as follows:

§ 58.40 Index reporting.

* * * * *

(c) The population of urban areas for purposes of index reporting are the most recent U.S. census population figures as defined in § 58.1 paragraph (s).

4. Appendix A is revised to read as follows:

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

1. General Information

This Appendix specifies the minimum quality assurance requirements applicable to SLAMS air monitoring data submitted to EPA. States are encouraged to develop and maintain quality assurance programs more extensive than the minimum required.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). For a given monitoring system, the greater the effort and the effectiveness of the control, the better the resulting quality of the monitoring data will be. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of SLAMS data quality are required to be reported to EPA periodically. To provide national uniformity in this assessment and reporting of data quality for all SLAMS networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, and 5 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specification, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring agency depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etec. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each State to develop a quality assurance system that is most efficient and effective for its own circumstances.

2. Quality Assurance Requirements

2.1 Each State must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the Regional Administrator, or his designee. The Quality Assurance Program will be reviewed during the annual system audit described in Section 2.4.

2.2 Primary guidance for developing the quality assurance program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for SLAMS automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in the respective operation and instruction manuals associated with those analyzers. This guidance, and any other pertinent information from appropriate sources, should be used by the States in developing their quality assurance programs.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Quality control procedures for air pollution episode monitoring;

(12) Recording and validating data;

(13) Data quality assessment (precision and accuracy);

(14) Documentation of quality control information.

2.3 *Pollutant Concentration and Flow Rate Standards.*

2.3.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) use to obtain test concentrations for CO, SO_2, and NO_2 must be traceable to either a National Bureau of Standards (NBS) Standard Reference Material (SRM) or an NBS/EPA-approved commercially available Certified Reference Material (CRM). CRM's are described in Reference 5, and a list of CRM sources is available from the Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

General guidance and recommended techniques for certifying gaseous working standards against an SRM or CRM are provided in Section 2.0.7 of Reference 3. Direct use of a CRM as a working standard is acceptable, but direct use of an NBS SRM as a working standard is discouraged because of the limited supply and expense of SRM's.

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3. Flow rate measurements must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying some types of flowmeters is provided in Reference 2.

2.4 National Performance and System Audit Programs.

Agencies operating SLAMS network stations shall be subject to annual EPA systems audits of their ambient air monitoring program and are required to participate in EPA's National Performance Audit Program. These audits are described in Section 1.4.16 of Reference 2 and Section 2.0.11 of Reference 3. For instructions, agencies should contact either the appropriate EPA Regional Quality Assurance Coordinator or the Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in SLAMS shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the SLAMS data being routinely produced. Measurement accuracy and precision are estimated for both automated and manual methods. The individual results of these tests for each method or analyzer shall be reported to EPA as specified in Section 4. EPA will then calculate quarterly integrated estimates of precision and accuracy applicable to the SLAMS data as described in Section 5. Data assessment results should be reported to EPA only for methods and analyzers approved for use in SLAMS monitoring under Appendix C of this part.

The integrated data quality assessment estimates will be calculated on the basis of "reporting organizations." A reporting organization is defined as a State, subordinate organization within a State, or other organization that is responsible for a set of stations that monitor the same pollutant and for which precision or accuracy assessments can be pooled. States must define one or more reporting organizations for each pollutant such that each monitoring station in the State SLAMS network is included in one, and only one, reporting organization.

Each reporting organization shall be defined such that precision or accuracy among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. Common factors that should be considered by States in defining reporting organizations include: (1) Operation by a common team of field operators, (2) common calibration facilities, and (3) support by a common laboratory or headquarters. Where there is uncertainty in defining the reporting organizations or in assigning specific sites to reporting organizations, States shall consult with the appropriate EPA Regional Office for guidance. All definitions of reporting organizations shall be subject to final approval by the appropriate EPA Regional Office.

Assessment results shall be reported on forms or in a format similar to Figures A–1 and A–2 (general forms) or Figures A–3 and A–4 (site- and method-specific forms). Concentration and flow standards must be as specified in Section 2.3 or 3.4. In addition, working standards and equipment used for accuracy audits must not be the same standards and equipment used for routine calibration. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table A–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 *Precision of Automated Methods.*

A one-point precision check must be carried out at least once every two weeks on each automated analyzer used to measure SO_2, NO_2, O_3 and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, andO_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the Regional Administrator or his designee. However, the results of precision checks at concentration levels other than those shown above need not be reported to EPA. The standards from which precision check test concentrations are obtained must meet the specifications of section 2.3.

Except for certain CO analyzers described below, analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO analyzer may be temporarily modified during the precision check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, *provided that* the analyzer's response is not likely to be altered by these deviations from the normal operational mode. If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments.

The differences between the actual concentration of the precision check gas and the concentration indicated by the analyzer is used to assess the precision of the monitoring data as described in section 5.1.

3.2 *Accuracy of Automated Methods.*

Each calendar quarter, audit at least 25 percent of the SLAMS analyzers that monitor for SO_2, NO_2, O_3, or CO such that each analyzer is audited at least once per year. If there are fewer than four analyzers for pollutant within a reporting organization, randomly reaudit one or more analyzers so that at least one analyzer for that pollutant is audited each calendar quarter. Where possible, EPA strongly encourages more frequent auditing, to an audit frequency of up to once per quarter for each SLAMS analyzer.

The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		
	SO_2, O_3	NO_2	CO
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain 0.10 ∓ .02 ppm NO to approximate a typical ambient mix of NO and NO_2.

To audit SLAMS analyzers operating on ranges higher then 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO, use audit gases of appropriately higher concentration as approved by the Regional Administrator or his designee. The results of audits at concentration levels other than those shown in the above table need not be reported to EPA.

The standards from which audit gas test concentrations are obtained must meet the specifications of Section 2.3. Working or transfer standards and equipment used for auditing must not be the same as the standards and equipment used for calibration and spanning, but may be referenced to the same NBS SRM, CRM, or primary UV photometer. The auditor should not be the operator/analyst who conducts the routine monitoring, calibration, and analysis.

The audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception given in section 3.1 for certain CO analyzers does not apply for audits.

Report both the test concentrations and the concentration measurements produced by the analyzer being tested. The differences between these concentrations are used to assess the accuracy of the monitoring data as described in Section 5.2.

3.3 *Precision of Manual Methods.*

For networks of manual methods, select one or more monitoring sites within the reporting organization for duplicate sampling as follows: for 1 to 5 sites, select 1 site; for 6 to 20 sites, select 2 sites; and for over 20 sites, select 3 sites. Where possible, additional collocated sampling is encouraged. Sites with the highest expected annual arithmetic mean concentration must be selected or, if such sites are impractical, alternate sites approved by the Regional Administrator may be selected. The two collocated samplers must be within 4 meters of each other, and high-volume particulate matter [or PM_{10}] samplers must be at least 2 meters apart to preclude airflow interference. Calibration, sampling and analysis must be the same for other collocated samplers and the same as for all other samplers in the network.

For each pair of collocated samplers, designate one sampler as the primary sampler whose samples will be used to report air quality for the site, and designate the other as the duplicate sampler. Each duplicate sampler must be operated concurrently with its associated routine sampler at least once per week. The operation schedule should be selected so that the sampling days are distributed evenly over the year and over the seven days of the week. Report the measurements from both samplers at each collocated sampling site, including measurements falling below the limits specified in 5.3(a). The differences in measured concentration ($\mu g/m^3$) between the two collocated samplers are used to calculate precision as described in Section 5.3.

3.4 *Accuracy of Manual Methods.*

The accuracy of manual sampling methods is assessed by auditing a portion of the measurement process. For particulate matter methods, the flow rate during sample collection is audited. For Pb methods, the flow rate and analytical measurement are audited. The flow rate audit should be scheduled so as to avoid interference with a scheduled sampling period. For SO_2 and NO_2 methods, the analytical measurement is audited.

(a) *Particulate matter methods.* Each calendar quarter, audit the flow rate of at least 25 percent of the samplers such that each sampler is audited at least once per year. If there are fewer than four high-volume samplers within a reporting organization, randomly reaudit one or more samplers so that one sampler is audited each calendar quarter. Audit each sampler at its normal operating flow rate, using a flow rate transfer standard as described in Section 2.3.3. The flow rate standard used for auditing must not be the same flow rate standard used to calibrate the sampler. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate standard. The flow audit should be scheduled so as to avoid interference with a scheduled sampling period. The differences between the audit flow rate and the flow rate indicated by the sampler's normally used flow indicator are used to calculate accuracy as described in Section 5.4.

Great care must be used in auditing high-volume particulate matter samplers having flow regulators because the introduction of resistance plates in the audit flow standard device can cause abnormal flow patterns at the point of flow sensing. For this reason, the flow audit standard should be used with a normal filter in place and without resistance plates in auditing flow-regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

(b) *SO_2 Methods.* Prepare audit solutions from a working sulfite-TCM solution as described in section 10.2 of the SO_2 Reference Method (Appendix A of Part 50 of this chapter). These audit samples must be prepared independently from the standardized sulfite solutions used in the routine calibration procedure. Sulfite-TCM audit samples must be stored between 0 and 5 °C and expire 30 days after preparation.

Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg SO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. The differences between the audit concentrations (in μg SO_2/ml) and the indicated concentrations (in μg SO_2/ml) are used to calculate accuracy as described in section 5.4.2.

(c) *NO_2 Methods.* Prepare audit solutions from a working sodium nitrite solution as described in the appropriate equivalent method (see reference 4). These audit samples must be prepared independently from the standardized nitrite solution used in the routine calibration procedure. Sodium nitrite audit samples expire 3 months after preparation. Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg NO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. The differences between the audit concentrations (in μg NO_2/ml) and the indicated concentrations (in μg NO_2/ml) are used to calculate accuracy as described in section 5.4.2.

(d) *Pb Methods.* For the Pb reference method (Appendix G of Part 50 of this chapter), the flow rates of the high-volume Pb samplers shall be audited as part of the TSP network using the same procedures described in Section 3.4(a). For agencies operating both TSP and Pb networks, 25 percent of the total number of high-volume samplers are to be audited each quarter.

Each calendar quarter, audit the Pb reference method analyses using glass fiber filter strips containing a known quantity of Pb. These audit sample strips are prepared by depositing a lead solution on 1.9 cm by 20.3 cm (¾ inch by 8 inch) unexposed glass fiber filter strips and allowing them to dry thorougly. The audit samples must be prepared using batches of reagents different from those used to calibrate the lead analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Pb concentration, μg/strip	Equivalent ambient Pb concentration,[1] $\mu g/m^3$
1	100–300	0.5–1.5
2	600–1000	3.0–5.0

[1] Equivalent ambient Pb concentration in $\mu g/m^3$ is based on sampling at 1.7 m^3/min for 24 hours on 20.3 cm × 25.4 cm (8 inch × 10 inch) glass fiber filter.

Audit samples must be extracted using the same extraction procedure used for exposed filters.

Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter. The percent difference between the audit concentration (in μg Pb/strip) and the analyst's measured concentration (in μg Pb/strip) is used to calculate analysis accuracy as described in Section 5.4.2.

The accuracy of an equivalent method is assessed in the same manner as for the reference method. The flow auditing device and Pb analysis audit samples must be compatible with the specific requirements of the equivalent method.

4. Reporting Requirements

For each pollutant, prepare a list of all monitoring sites and their SAROAD site identification codes in each reporting organization and submit the list to the EPA Regional Office, with a copy to the Environmental Monitoring Systems Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (EMSL/RTP). Whenever there is a change in this list of monitoring sites in a reporting organization, report this change to the Regional Office and to EMSL/RTP.

4.1 *Quarterly Reports.*

Within 120 calendar days after the end of each quarter, each reporting organization shall report to EMSL/RTP through the appropriate EPA Regional Office the results of all valid precision and accuracy assessments it has carried out during the quarter. This information should be reported in a format similar to that of the forms illustrated in Figures A–1 and A–2 or A–3 and A–4, or in an alternate format (including machine-readable or electronic transfer formats) acceptable to the appropriate Regional Office. Instructions for using the forms are provided in Section 4.3 below. Do not report results from invalid tests, from tests carried out during a time period for which ambient data immediately prior or subsequent to the tests were invalidated for appropriate reasons, or from tests of methods or analyzers not approved for use in SLAMS monitoring networks under Appendix C of this Part.

Within 120 days after the data quality assessment information is submitted, EPA will calculate integrated precision and accuracy estimates for each reporting organization as specified in Section 5 and return reports of the respective estimates to each reporting organization.

4.2. *Annual Reports.*

When precision and accuracy estimates for a reporting organization have been calculated for all four quarters of the calendar year, EPA will calculate the average probability limits for precision and accuracy for the year and will associate them with the data submitted in the annual SLAMS report required by § 58.26.

Each reporting organization shall submit, along with its annual SLAMS report, a listing by pollutant of all monitoring sites in the reporting organization.

4.3 *Instructions for Data Assessment Reporting Forms.*

Optional forms for reporting data quality assessment information are provided in Figures A–1 through A–4. The forms in Figures A–3 and A–4 are site- and method-specific forms for reporting assessment data from individual analyzers or samplers, whereas the forms in Figures A–1 and A–2 are general forms for reporting data from several sites and methods on the same form. The instructions for both sets of forms are identical:

Common Information (all forms):

Block No.	Description
1–2	State: The two digit SAROAD State code.
3–5	Reporting Organization: A unique 3-digit code assigned by each State to each of its respective reporting organizations.
6–7	Year: Last two digits of the calendar year corresponding to the quarter specified in block 8.
8	Quarter: Enter 1, 2, 3, or 4 to refer to the calendar quarter during which the data quality assessments were obtained.
9	Enter "1" for original assessment data, "2" to revise assessment data previously submitted, or "3" to delete previously submitted assessment data.

Also enter the name of the reporting organization and the date the form is submitted.

Accuracy data (Figs. A–1 and A–3):

Block No.	Description
10–18	Site: Enter the SAROAD site identification code (first 9 digits only).
21–23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., SO_2, CO, TSP, [PM_{10}], etc.) on the blank to the left of block No. 21.
24	Precode with an "A".
25–28	Date: Enter month and day of audit.
29	T: Enter "1" if the audit standards were traced to NBS by the reporting organization; enter "2" if the standards were traced to NBS by some other organization.
30	S: Enter the code letter of the source of the local primary standard used, from the list on the form.
31–32	Unit code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
33	Precoded with a "0" or a "1."
34–40	Level 1 Actual: Enter the actual concentration determined from the audit standard in appropriate blocks with respect to the precoded decimal point.
41–47	Level 1 Indicated: Enter the concentration indicated by the analyzer or sampler being audited in appropriate blocks with respect to the precoded decimal point.
48–61	Level 2: Enter the actual and indicated concentrations for audit level 2, if applicable.
34–61	Levels 3 and 4 (if applicable): On the second line, enter the actual and indicated concentrations for audit level 3 and, if used, audit level 4.

Precision data (Figs. A–2 and A–4):

Block No.	Description
10–18	Site: Enter the SAROAD site identification code (first 9 digits only).
21–23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., NO_2, Pb, TSP, [PM_{10}], etc.) on the blank to the left of block No. 21.
24	Precoded with a "P".
25–28	Date: Enter month and day of test.
31–32	Unit Code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
34–40	Actual or Primary: Enter the value of the known test concentration or the concentration measurement associated with the sampler designated as the primary sampler.
41–47	Indicated or Duplicate: Enter the value of the concentration measurement from the analyzer or the duplicate collocated sampler.

5. Calculations for Data Quality Assessment

Calculation of estimates of integrated precision and accuracy are carried out by EPA according to the following procedures. Reporting orgnizations should report the results of individual precisions and accuracy tests as specified in Sections 3 and 4 even though they may elect to carry out some or all of the calculations in this section on their own.

5.1 *Precision of Automated Methods.*

Estimates of the precision of automated methods are calculated from the results of biweekly precision checks as specified in Section 3.1. At the end of each calendar quarter, an integrated precision probability interval for all SLAMS analyzers in the reporting organization is calculated for each pollutant.

(a) *Single Analyzer Precision.* The percentage difference (d_i) for each precision check is calculated using equation 1, where Y_i is the concentration indicated by the analyzer for the i-th precision check and X_i is the known concentration for the i-th precision check.

$$d_i = \frac{Y_i - X_i}{X_i} \times 100 \qquad (1)$$

For each analyzer, the quarterly average (d_j) is calculated with equation 2, and the standard deviation (S_j) with equation 3, where n is the number of precision checks on the instrument made during the calendar quarter. For example, n should be 6 or 7 if precision checks are made bi-weekly during a quarter.

$$d_j = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad (2)$$

$$S_j = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (3)$$

(b) *Precision for Reporting Organization.* For each pollutant, the average of averages (D) and the pooled standard deviation (S_p) are calculated for all analyzers monitoring the pollutant, using either equations 4 and 5 or 4a and 5a, where k is the number of analyzers within the reporting organization for a single pollutant.

$$D = \frac{1}{k} \sum_{j=1}^{k} d_j \quad (4)$$

$$D = \frac{n_1 d_1 + n_2 d_2 + \ldots + n_j d_j + \ldots + n_k d_k}{n_1 + n_2 + \ldots + n_j + \ldots + n_k} \quad (4a)$$

$$S_a = \sqrt{\frac{1}{k} \sum_{j=1}^{k} S_j^2} \quad (5)$$

$$S_a = \sqrt{\frac{(n_1 - 1)S_1^2 + (n_2 - 1)S_2^2 + \ldots + (n_j - 1)S_j^2 + \ldots + (n_k - 1)S_k^2}{n_1 + n_2 + \ldots + n_j + \ldots + n_k - k}} \quad (5a)$$

Equations 4 and 5 are used when the same number of precisions checks are made for each analyzer. Equations 4a and 5a are used to obtain a weighted average and a weighted standard deviation when different numbers of precision checks are made for the analyzers.

For each pollutant, the 95 Percent Probability Limits for the precision of a reporting organization are calculated using equations 6 and 7.

Upper 95 Percent Probability Limit = $D + 1.96 S_a$ (6)

Lower 95 Percent Probability Limit = $D - 1.96 S_a$ (7)

5.2 *Accuracy of Automated Methods.*

Estimates of the accuracy of automated methods are calculated from the results of independent audits as described in Section 3.2. At the end of each calendar quarter, an integrated accuracy probability interval for all SLAMS analyzers in the reporting organization is calculated for each pollutant. Separate probability limits are calculated for each audit concentration level listed in Section 3.2.

(a) *Single Analyzer Accuracy.* The percentage difference (d_i) for each audit concentration is calculated using equation 1, where Y_i is the analyzer's concentration measurement from the i-th audit check and X_i is the actual concentration of the audit gas used for the i-th audit check.

(b) *Accuracy for Reporting Organization.* For each audit concentration level, the average (D) of the individual percentage differences (d_i) for all n analyzers measuring a given pollutant audited during the quarter is calculated using equation 8.

$$D = \frac{1}{n} \sum_{i=1}^{n} d_i \quad (8)$$

For each concentration level, the standard deviation (S_a) of all the individual percentage differences for all analyzers audited during the quarter is calculated, for each pollutant, using equation 9.

$$S_a = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \quad (9)$$

For reporting organizations having four or fewer analyzers for a particular pollutant, only one audit is required each quarter and the average and standard deviation cannot be calculated. For such reporting organizations, the audit results of two consecutive quarters are required to calculate an average and a standard deviation, using equations 8 and 9. Therefore, the reporting of probability limits is on a semi-annual (instead of a quarterly) basis.

For each pollutant, the 95 Percent Probability Limits for the acuracy of a reporting organization are calculated at each audit concentration level using equations 6 and 7.

5.3 *Precision of Manual Methods.*

Estimates of precision of manual methods are calculated from the results obtained from collocated samplers as described in Section 3.3. At the end of each calendar quarter, an integrated precision probability interval for all collocated samplers operating in the reporting organization is calculated for each manual method network.

(a) *Single Sampler Precision.* At low concentrations, agreement between the measurements of collocated samplers, expressed as percent age differences, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision calculations only when both measurements are above the following limits:

TSP: 20 $\mu g/m^3$,
SO_2: 45 $\mu g/m^3$,
NO_2: 30 $\mu g/m^3$,
Pb: 0.25 $\mu g/m^3$, and
[PM_{10}: 20 $\mu g/m^3$].

For each selected measurement pair, the percentage difference (d_i) is calculated, using equation 10.

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \quad (10)$$

Where Y_i is the pollutant concentration measurement obtained from the duplicate sampler and X_i is the concentration measurement obtained from the primary sampler designated for reporting air quality for the site. For each site, the quarterly average percentage difference (d_i) is calculated from equation 2 and the standard deviation (S_j) is calculated from equation 3, where n = the number of selected measurement pairs at the site.

(b) *Precision for Reporting Organization.* For each pollutant, the average percentage difference (D) and the pooled standard deviation (S_a) are calculated, using equations 4 and 5, or using equations 4a and 5a if different numbers of paired measurements are obtained at the collocated sites. For these calculations, the k of quations 4, 4a, 5 and 5a is the number of collocated sites.

The 95 Percent Probability Limits for the integrated precision for a reporting organization are calculated using equations 11 and 12.

Upper 95 Percent Probability Limit = $D + 1.96 \frac{S_a}{\sqrt{2}}$ (11)

Lower 95 Percent Probability Limit = $D - 1.96 \frac{S_a}{\sqrt{2}}$ (12)

5.4 *Accuracy for Manual Methods.* Estimates of the accuracy of manual methods are calculated from the results of independent audits as described in Section 3.4. At the end of each calendar quarter, an integrated accuracy probability interval is calculated for each manual method network operated by the reporting organization.

5.4.1 *Particulate Matter Samplers (including reference method Pb samplers).*

(a) *Single Sampler Accuracy.* For the flow rate audit described in Section 3.4(a), the percentage difference (d_i) for each audit is calculated using equation 1, where X_i represents the known flow rate and Y_i represents the flow rate indicated by the sampler.

(b) *Accuracy for Reporting Organization.* For each type of particulate matter measured (i.e., TSP/Pb and [PM_{10}]), the average (D) of the individual percentage differences for all similar particulate matter samplers audited during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences for all of the similar particulate matter samplers audited during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the integrated accuracy for the reporting organization are calculated using equations 6 and 7. For reporting organizations having four or fewer particulate matter samplers, only one audit is required each quarter and the audit results of two consecutive quarters are required to calculate an average and a standard deviation. In that case, probability limits will be reported semi-annually rather than quarterly.

5.4.2 *Analytical Methods for SO_2, NO_2, and Pb.*

(a) *Single Analysis-Day Accuracy.* For each of the audits of the analytical methods for SO_2, NO_2, and Pb described in Section 3.4 (b), (c), and (d), the percentage difference (d_i) at each concentration level is calculated using equation 1, where X_i represents the known value of the audit sample and Y_i represents the value of SO_2, NO_2, and Pb indicated by the analytical method.

(b) *Accuracy for Reporting Organization.* For each analytical method, the average (D) of the individual percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 8. The standard deviation (S_a) of the percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the accuracy for the reporting organization are calculated using equations 6 and 7.

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA–600/4–83–023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume 1—Principles." EPA–600/9–76–005. March 1976. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

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4. "List of Desingated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD–77), Research Triangle Park, NC 27711.

5. Hughes, E.E. and J. Mandel. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards SRM's. EPA–600/7–81–010. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, May, 1981. (Joint NBS/EPA Publication)

6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979.

TABLE A–1.—MINIMUM DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision				
Automated methods for SO_2, NO_2, O_3, and CO.	Response check at concentration between .08 and .10 ppm (8 & 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
Manual methods including lead	Collocated samplers	1 site for 1–5 sites, 2 sites for 6–20 sites, 3 sites for >20 sites (sites with highest conc.).	Once per week	Two concentration measurements.
Accuracy				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03–.08 ppm*, .15–.20 ppm*, .35–.45 ppm*, .80–.90 ppm* (if applicable).	1. Each analyzer	1. Once per year	Actual concentration and measured concentration for each level.
		2. 25% of analyzers (at least 1).	2. Each calendar quarter	
Manual methods for SO_2 and NO_2.	Check of analytical procedure with audit standard solutions.	Analytical system	Each day samples are analyzed, at least twice per quarter.	Actual concentration and measured concentration for each audit solution.
TSP, [PM_{10}]	Check of sampler flow rate	1. Each sampler	1. Once per year	Actual flow rate and flow rate indicated by the sampler.
		2. 25% of samplers (at least 1)	2. Each calendar quarter	
Lead	1. Check sample flow rate as for TSP.	1. Each sampler	1. Include with TSP	1. Same as for TSP.
	2. Check analytical system with Pb audit strips.	2. Analytical system	2. Each quarter	2. Actual concentration and measured concentration of audit samples (μg Pb/strip)

*Conc. times 100 for CO.

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DATA QUALITY ASSESSMENT FORM

ACCURACY

STATE (1–2) REPORTING ORGANIZATION (3–6) YEAR (6–7) QUARTER (8) SEND COMPLETED FORM TO REGIONAL OFFICE

NAME OF REPORTING ORGANIZATION ______________________

(9) 1=ORIGINAL 2=REVISION 3=DELETION

DATE SUBMITTED ______________ MO./DAY/YR

SAROAD SITE CODE	POLLU-TANT	METHOD CODE		DATE MON. DAY	T[1]	S[2]	UNIT	UNIT CODE		ACTUAL	INDICATED	ACTUAL	INDICATED
										LEVEL 1		LEVEL 2	
10–18		21–23	A (24)	25–28	29	30		31–32	0 (33)	34–37 . 38–40	41–44 . 45–47	48–51 . 52–54	55–58 . 59–61
										LEVEL 3		LEVEL 4	
									1 (33)	34–37 . 38–40	41–44 . 45–47	48–51 . 52–54	55–58 . 59–61
										LEVEL 1		LEVEL 2	
			A						0	.	.	.	.
										LEVEL 3		LEVEL 4	
									1	.	.	.	.
										LEVEL 1		LEVEL 2	
			A						0	.	.	.	.
										LEVEL 3		LEVEL 4	
									1	.	.	.	.
										LEVEL 1		LEVEL 2	
			A						0	.	.	.	.
										LEVEL 3		LEVEL 4	
									1	.	.	.	.
										LEVEL 1		LEVEL 2	
			A						0	.	.	.	.
										LEVEL 3		LEVEL 4	
									1	.	.	.	.

[1] Traceability: Audit gasses were traced to NBS by
1 Reporting organization
2 Other than reporting organization

[2] Source of local primary standard
A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other; specify ________

UNIT CODES	
ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

Figure A-1

DATA QUALITY ASSESSMENT FORM

PRECISION

STATE | REPORTING ORGANIZATION (1 2 3 4 5) | YEAR (6 7) | QUARTER (8) | SEND COMPLETED FORM TO REGIONAL OFFICE

1=ORIGINAL 2=REVISION 3=DELETION (9)

NAME OF REPORTING ORGANIZATION ___

DATE SUBMITTED _____ (MO./DAY/YR)

SAROAD SITE CODE 10–18	POLLUTANT	METHOD CODE 21–23	24	DATE MON. 25–26	DAY 27–28	UNIT	UNIT CODE 31–32	ACTUAL OR PRIMARY 34–37	38–40	INDICATED OR DUPLICATE 41–44	45–47
			P								
			P								
			P								
			P								

UNIT CODES

ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

Figure A-2

DATA QUALITY ASSESSMENT FORM

ACCURACY

STATE (1–2) REPORTING ORGANIZATION (3–6) YEAR (6–7) QUARTER (8)

SEND COMPLETED FORM TO REGIONAL OFFICE

NAME OF REPORTING ORGANIZATION ______________________

9: 1=ORIGINAL, 2=REVISION, 3=DELETION

DATE SUBMITTED ______________ MO./DAY/YR

SAROAD SITE CODE (10–18) POLLUTANT METHOD CODE (21–23) A (24)

DATE MON. DAY	T[1]	S[2]	UNIT	UNIT CODE		ACTUAL		INDICATED		ACTUAL		INDICATED	
25–28	29	30		31–32	0 (33)	34–37	38–40	41–44	45–47	48–51	52–54	55–58	59–61
						LEVEL 1				LEVEL 2			
					1 (33)	34–37	38–40	41–44	45–47	48–51	52–54	55–58	59–61
						LEVEL 3				LEVEL 4			
					0	LEVEL 1				LEVEL 2			
					1	LEVEL 3				LEVEL 4			
					0	LEVEL 1				LEVEL 2			
					1	LEVEL 3				LEVEL 4			
					0	LEVEL 1				LEVEL 2			
					1	LEVEL 3				LEVEL 4			
					0	LEVEL 1				LEVEL 2			
					1	LEVEL 3				LEVEL 4			

[1] Traceability: Audit gasses were traced to NBS by

1 Reporting organization

2 Other than reporting organization

[2] Source of local primary standard

A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other; specify ________

UNIT CODES	
ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

Figure A-3

DATA QUALITY ASSESSMENT FORM

PRECISION

STATE | REPORTING ORGANIZATION (1 2 3 4 5) | YEAR (6 7) | QUARTER (8) | SEND COMPLETED FORM TO REGIONAL OFFICE

(9) 1=ORIGINAL 2=REVISION 3=DELETION

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____
MO./DAY/YR

SAROAD SITE CODE 10–18 | POLLUTANT | METHOD CODE 21–23 | 24 [P]

UNIT CODES	
ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

DATE MON. 25–26	DAY 27–28	UNIT	UNIT CODE 31–32	ACTUAL OR PRIMARY 34–37	38–40	INDICATED OR DUPLICATE 41–44	45–47

Figure A-4

METHOD	DESIGNATION NUMBER	METHOD CODE
SO_2 Manual Methods		
Ref. method (pararosaniline)	—	801
Technicon I (pararosaniline)	EQS-0775-001	001
Technicon II (Pararosaniline)	EQS-0775-002	002
SO_2 Analyzers		
Asarco 500	EQSA-0877-024	024
Beckman 953	EQSA-0678-029	029
Bendix 8303	EQSA-1078-030	030
Lear Siegler AM2020	EQSA-1280-049	049
Lear Siegler SM1000	EQSA-1275-005	005
Meloy SA185-2A	EQSA-1275-006	006
Meloy SA285E	EQSA-1078-032	032
Meloy SA700	EQSA-0580-046	046
Monitor Labs 8450	EQSA-0876-013	013
Monitor Labs 8850	EQSA-0779-039	039
Philips PW9700	EQSA-0876-011	011
Philips PW9755	EQSA-0676-010	010
Thermo Electron 43	EQSA-0276-009	009
O_3 Analyzers		
Beckman 950A	RFOA-0577-020	020
Bendix 8002	RFOA-0176-007	007
CSI 2000	RFOA-0279-036	036
Dasibi 1003-AH,-PC,-RS	EQOA-0577-019	019
Dasibi 1008-AH	EQOA-0383-056	056
McMillan 1100-1	RFOA-1076-014	014
McMillan 1100-2	RFOA-1076-015	015
McMillan 1100-3	RFOA-1076-016	016
Meloy OA325-2R	RFOA-1075-003	003
Meloy OA350-2R	RFOA-1075-004	004
Monitor Labs 8410E	RFOA-1176-017	017
Monitor Labs 8810	EQOA-0881-053	053
PCI Ozone Corp. LC-12	EQOA-0382-055	055
Philips PW9771	EQOA-0777-023	023
Thermo Electron 49	EQOA-0880-047	047

METHOD	DESIGNATION NUMBER	METHOD CODE
NO_2 Manual Methods		
Sodium arsenite	EQN-1277-026	026
Sodium arsenite/Technicon II	EQN-1277-027	027
TGS-ANSA	EQN-1277-028	028
NO_2 Analyzers		
Beckman 952A	RFNA-0179-034	034
Bendix 8101-B	RFNA-0479-038	038
Bendix 8101-C	RFNA-0777-022	022
CSI 1600	RFNA-0977-025	025
Meloy NA530R	RFNA-1078-031	031
Monitor Labs 8440E	RFNA-0677-021	021
Monitor Labs 8840	RFNA-0280-042	042
Philips PW9762/02	RFNA-0879-040	040
Thermo Electron 14B/E	RFNA-0179-035	035
Thermo Electron 14D/E	RFNA-0279-037	037
TSP Manual Method		
Reference method (high-volume)	—	802
Pb Manual Methods		
Ref. method (hi-vol/AA spect.)	—	803
Hi-vol/AA spect. (alt. extr.)	EQL-0380-043	043
Hi-vol/Flameless AA (EMSL/EPA)	EQL-0380-044	044
Hi-vol/ICAP spect. (EMSL/EPA)	EQL-0380-045	045
Hi-vol/Wavelength disp. XRF	EQL-0581-052	052
Hi-vol/ICAP spect. (Montana)	EQL-0483-057	057
Hi-vol/Energy-disp. XRF	EQL-0783-058	058
CO Analyzers		
Beckman 866	RFCA-0876-012	012
Bendix 8501-5CA	RFCA-0276-008	008
Dasibi 3003	RFCA-0381-051	051
Horiba AQM-10, -11, -12	RFCA-1278-033	033
Horiba 300E/300SE	RFCA-1180-048	048
MASS - CO 1 (Massachusetts)	RFCA-1280-050	050
Monitor Labs 8310	RFCA-0979-041	041
MSA 202S	RFCA-0177-018	018
Thermo Electron 48	RFCA-0981-054	054

BILLING CODE 6560-50-C

[INFORMATION FOR BACK OF DATA FORMS]

Appendix B—[Amended]

5. Appendix B is amended as follows:

a. Section 1 is revised to read as follows:

1. General Information

This Appendix specifies the minimum quality assurance requirements for the control and assessment of the quality of the PSD ambient air monitoring data submitted to EPA by an organization operating a network of PSD stations. Such organizations are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort and effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of PSD monitoring data quality are required to be made and reported periodically by the monitoring organization.

To provide national uniformity in the assessment and reporting of data quality among all PSD networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, 5, and 6 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring organization depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each organization to develop a quality control system that is most efficient and effective for its own circumstances.

For purposes of this Appendix, "organization" is defined as a source owner/operator, a government agency, or their contractor that operates an ambient air pollution monitoring network for PSD purposes.

b. Sections 2.1 and 2.2 are revised to read as follows:

2. Quality Assurance Requirements

2.1 Each organization must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives and quality assurance requirements of the permit-granting authority, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the permit-granting authority. The Quality Assurance Program will be reviewed during the system audits described in Section 2.4.

2.2 Primary guidance for developing the Quality Assurance Program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in their respective operation and instruction manuals. This guidance, and any other pertinent information from appropriate sources, should be used by the organization in developing its quality assurance program.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Recording and validating data;

(12) Date quality assessment (precision and accuracy);

(13) Documentation of quality control information.

* * * * *

(c) In Section 2.3.1, the phrase "in Reference 7" is changed to "in Reference 5" (two places) and the phrase "References 2 and 3" is changed to "Section 2.0.7 of Reference 3." Also, the phrase "the address shown in Reference 7." is changed to "Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711."

d. Sections 2.3.2 and 2.3.3 are revised to read as follows:

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3 Flow measurement must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying various types of flowmeters is provided in Reference 3.

e. In Section 2.4, the phrase "Section 1.4.16 of reference 1 and reference 6" is changed to "Section 1.4.16 of reference 2 and Section 2.0.11 of reference 3."

f. In Section 3, an introductory paragraph is added to read as follows:

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in PSD monitoring shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the data being routinely collected. The results of these tests shall be reported as specified in Section 6. Concentration standards used for the tests must be as specified in Section 2.3. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table B–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following section.

* * * * *

g. The first paragraph of Section 3.2 is revised to read as follows:

3.2 *Accuracy of Automated Methods.* Each sampling quarter audit each analyzer that monitors for SO_2, NO_2, O_3, or CO at least once. The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		
	SO_2, O_3	NO_2	CO
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain 0.10±.02 ppm NO to approximate a typical ambient mix of NO and NO_2.

* * * * *

h. In the second paragraph of section 5.1, the phrase "equation 1" is changed to "equation 1a," and equation 1a is added to read as follows:

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (1a)$$

i. The section entitled "References" is revised to read as follows:

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA–600/4–83–023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I—Principles." EPA–600/9–76–005. March 1976. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II—Ambient Air Specific Methods." EPA–600/4–77–027a. May 1979. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

4. "List of Designated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD–77), Research Triangle Park, NC 27711.

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6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

j. Table B–1 is added to read as follows:

TABLE B–1.—MINIMUM PSD DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision				
Automated methods for SO_2, NO_x, O_3, CO.	Response check at concentrations between .08 and .10 ppm (8 and 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
TSP, [PM_{10}], Lead	Collocated samplers	Highest concentration site in monitoring network.	Once per week or every 3rd day for continuous sampling.	Two concentration measurements.
Accuracy				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03–.08 ppm*, .15–.20 ppm*, .35–.45 ppm*, .80–.90 ppm* (if applicable).	Each analyzer	Once per sampling quarter	Actual concentration and measured concentration for each level.
TSP, [PM_{10}],	Sampler flow check	Each sampler	Once per sampling quarter	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Sample flow rate check 2. Check of analytical systems with Pb audit strips.	1. Each sampler 2. Analytical system	1. Once/quarter 2. Each quarter Pb sampler are analyzed.	1. Same as for TSP. 2. Actual concentration and measured concentration of audit samples (μg Pb/strip).

*Concentration shown times 100 for CO.

Appendix C—[Amended]

6. Appendix C is amended as follows:

a. Section 2.2 is revised to read as proposed in 49 FR 10445 in connection with proposed amendments for PM_{10} (49 FR 10435).

b. Sections 2.4 and 2.5 are removed and reserved.

c. In Section 2.6, subsection 2.6.1 is removed and reserved, and the heading of Section 2.6 is revised to read as follows:

2.6 *Use of methods with higher, nonconforming ranges in certain geographical areas.*

Appendix D—[Amended]

7. Appendix D is amended as follows:

a. In Section 2.5, the following sentence is inserted after the first sentence in the middle scale discussion which appears after the third paragraph. "Trees also may have a strong scavenging effect on O_3 and may tend to suppress O_3 concentrations in their immediate vicinity." The first sentence in the last paragraph of Section 2.5 is replaced by the following. "Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored only during the "ozone season" as designated in the SAROAD files on a State by State basis and described below:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Alabama	March	November.
Alaska	April	October.
Arizona	January	December.
Arkansas	March	November.
California	January	December.
Colorado	March	September.
Connecticut	April	October.
Delaware	....do	Do.
District of Columbia.	....do	Do.
Florida	January	December.
Georgia	March	November.
Hawaii	January	December.
Idaho	April	October.
Illinois	....do	Do.
Indiana	....do	Do.
Iowa	....do	Do.
Kansas	....do	Do.
Kentucky	....do	Do.
Louisiana	January	December.
Maine	April	October.
Maryland	....do	Do.
Massachusetts	....do	Do.
Michigan	....do	Do.
Minnesota	....do	Do.
Mississippi	March	November.
Missouri	April	October.
Montana	June	September.
Nebraska	April	October.

OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Nevada	January	December.
New Hampshire	April	October.
New Jersey	....do	Do.
New Mexico	January	December.
New York	April	October.
North Carolina	....do	Do.
North Dakota	May	September.
Ohio	April	October.
Oklahoma	March	November.
Oregon	April	October.
Pennsylvania	....do	Do.
Puerto Rico	January	December.
Rhode Island	April	October.
South Carolina	....do	Do.
South Dakota	June	September.
Tennessee	April	October.
Texas	January	December.
Utah	May	September.
Vermont	April	October.
Virginia	....do	Do.
Washington	....do	Do.
West Virginia	....do	Do.
Wisconsin	....do	Do.
Wyoming	....do	Do.
American Samoa	January	December.
Guam	....do	Do.
Virgin Islands	....do	Do.

b. In Section 3.2, Table 3 is revised as follows:

TABLE 3.—SO_2 National Air Monitoring Station Criteria

(Approximate number of stations per area) *

Population category	High concentration [b]	Medium concentration [c]	Low concentration [d]
>1,000,000	6-10	4-8	2-4
500,000 to 1,000,000	4-8	2-4	1-2
250,000 to 500,000	3-4	1-2	0-1
100,000 to 250,000	1-2	0-1	0

* Selection of urban areas and actual number of stations per area will be jointly determined by EPA and the State agency.
[b] High concentration—exceeding level of the primary NAAQS.
[c] Medium concentration—exceeding 60 percent of the level of the primary or 100% of the secondary NAAQS.
[d] Low concentration—less then 60 percent of the level of the primary or 100% of the secondary NAAQS.

c. In Section 3.3, the parenthetical expression "(neighborhood scale)" at the end of the last sentence in the 2nd paragraph is amended to read "(middle scale, neighborhood scale)". In the first sentence of the 4th paragraph the first use of the word "neighborhood" is removed and replaced by "category (b)" and the parenthetical expression "(neighborhood scale)" is replaced by "(middle scale or neighborhood scale)." In the 3rd sentence of the 4th paragraph the term "under the influence" is replaced by "unduly influenced by".

d. In Section 3.5 the first parenthetical expression in the second paragraph "(category (a) neighborhood scale)" is amended to read "(category (a), middle scale or neighborhood scale)."

e. Table 5 in Section 3.7, as proposed on March 20, 1984 (49 FR 10447), is revised as follows:

Table 5.—Summary of Spatial Scales for SLAMS and NAMS

Spatial Scale	Scales applicable for SLAMS							Scales applicable for NAMS						
	TSP	SO_x	CO	O_3	NO_x	Pb	PM_{10}	TSP	SO_x	CO	O_3	NO_x	Pb	PM_{10}
Micro	✓		✓			✓	✓	✓		✓			✓	✓
Middle	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Neighborhood	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Urban	✓	✓		✓	✓	✓	✓				✓	✓		
Regional	✓	✓		✓	✓	✓	✓							

Appendix E—[Amended]

8. Appendix E is amended as follows:

a. In the table of contents, Section 2.4 is revised and Sections 3.3, 4.4, 5.4, 6.4, 7.4 and 8.4 are inserted in the appropriate places as follows:

* * * * *

2.4 Spacing from trees and other considerations.

* * * * *

3.3 Spacing from trees and other considerations.

* * * * *

4.4 Spacing from trees and other considerations.

* * * * *

5.4 Spacing from trees and other considerations.

* * * * *

6.4 Spacing from trees and other considerations.

* * * * *

7.4 Spacing from trees and other considerations.

* * * * *

8.4 Spacing from trees and other considerations.

* * * * *

b. In Section 2.2, the last two sentences in the second paragraph are removed.

c. In Section 2, a new Section 2.4 replaces the existing Section 2.4.

2. Total Suspended Particulates (TSP).

* * * * *

2.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for particulate deposition or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flown pattern. To minimize the possible effects of trees on the measured TSP levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

In order to minimize the impact of wind blown dusts, stations should not be located on barren ground. Additional information on TSP probe siting may be found in reference 10.*

d. In Section 3.2 the words "should be placed more than 20 meters from trees and" are removed from the first sentence of the second paragraph.

e. In Section 3, a new Section 3.3 is added.

3. Sulfur Dioxide (SO_2).

* * * * *

3.3 *Spacing from trees and other considerations.*

Trees can provide surfaces for SO_2 adsorption and act as an obstruction to normal wind flow patterns. To minimize the possible effects of trees on the measured SO_2 levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree(s) protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

f. In Section 4.3, the next to last sentence in paragraph 3 is removed.

g. In Section 4, a new Section 4.4 is added.

4. Carbon Monoxide (CO)

* * * * *

4.4 *Spacing from trees and other considerations.*

Since CO is relatively non-reactive, the major factor concerning trees is as obstructions to normal wind flow patterns. For middle and neighborhood scale stations, trees should not be located between the major sources of CO, usually vehicles on a heavily traveled road, and the sampler. The sampler must be at least 10 meters from the drip line of a tree which is between the sampler and the road and extends at least 5 meters above the sampler. For microscale stations, no trees or shrubs should be located between the sampling inlet probe and the road.

h. In Section 5.2, the second and third sentences in the first paragraph are removed.

i. In Section 5.3, the 6th and 7th sentences in the first paragraph are removed.

j. In Section 5, a new section 5.4 is added.

5. Ozone (O_3)

* * * * *

5.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for O_3 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible effect of trees on measured O_3 levels, the probe should be placed at least 20 meters from the drip line of trees. Since the scavenging effect of trees is greater for ozone than for the other criteria pollutants, strong consideration of this effect must be given in locating the O_3 inlet probe to avoid this problem. Therefore, the sampler must be at least 10 meters from the drip line of trees that are located between the urban city core area and the sampler along the predominant summer day-time wind direction.

k. In Section 6.2, the word "trees" is removed from the 1st sentence. The sixth sentence is also removed.

l. In Section 6.3, the next to last sentence is removed.

6. Nitrogen Dioxide (NO_2)

* * * * *

6.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for NO_2 adsorption and/or reactions and obstruct

normal wind patterns. To minimize the possible scavenging effect of trees on the measured levels of NO_2 the probe should be placed at least 20 meters from the drip line. For trees that protrude above the height of the probe by 5 meters or more, the sampler must be at least 10 meters from the drip line of trees.

n. In Section 7.2, the first sentence is removed.

o. In Section 7, a new Section 7.4 is added.

7. Lead (Pb)

* * * * *

7.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for deposition or adsorption of lead particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) roadway sites there must not be any tree(s) between the source of the lead, i.e., the vehicles on the roadway, and the sampler. For neighborhood scale, category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree protrudes above the sampler.

p. In Section 8.2, as proposed on March 20, 1984 (49 FR 10448), the last sentence in the second paragraph is removed.

q. In Section 8, as proposed to be amended on March 20, 1984 (49 FR 10448), a new section 8.4 replaces the existing Section 8.4.

8. Particulate Matter (PM_{10})

* * * * *

8.4 *Spacing from trees and other considerations.*

Trees can provide surface for particulate deposition or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flow patterns. To minimize the possible effects of trees on the measured PM_{10} levels, the sampler should be placed at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which also could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protudes above the sampler.

Regarding other considerations, for those areas that are primarily influenced by stationary source emissions as opposed to roadway emissions, guidance in locating these areas may be found in the guideline document "Optimum Network Design and Site Exposure Criteria for Particulate Matter."[29]

Stations should not be located in an unpaved area unless there is vegetative ground cover year round, so that the impact of wind blown dusts will be kept to a minimum.

Appendix G—[Amended]

9. Apendix G is amended as follows:

a. In Section 8, the following is added to the end of the first paragraph "Also, in situations where the PSI value has not exceeded 50, as calculated by the critical pollutant, for the previous calendar year, the requirement to measure and report the PSI will be left up to the discretion of the reporting agency.

[FR Doc. 85–4882 Filed 3–7–85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
March 8, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

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 specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made 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 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). 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 construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and 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 subsequent to its publication date shall 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 contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made 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 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded 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 in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate 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, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado:	
CO83-5115	July 29, 1983.
CO84-5003	Feb. 24, 1984.
CO82-5127	Nov. 5, 1982.
District of Columbia: DC84-3009	Apr. 6, 1984.
Nevada: NV84-5014	June 8, 1984.
Oklahoma: OK84p4050	Sept. 7, 1984.
Wisconsin: WI84-5035	Oct. 19, 1984

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Illinois:	
IL83-2066 (IL85-5017)	Aug. 21, 1983.
IL83-2014 (IL85-5018)	Mar. 4, 1983.
Michigan: MI84-5043 (MI85-5019)	Dec. 28, 1984.
Pennsylvania: PA84-3041 (PA85-3012)	Nov. 9, 1984.
Virginia: VA85-3006 (VA85-3011)	Jan. 18, 1985.

Signed at Washington, D.C. this 1st day of March, 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CO83-5115 - MOD #3 (48 FR 34598 - July 29, 1983) Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators; Burners on Demolition; Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION NO. CO82-5127 MOD #9 (47 FR 50418 - November 5, 1982) Las Animas, Otero and Pueblo Counties, Colorado	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators: Burners on Demolition: Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION NO. CO84-5003 - MOD. #2 (49-FR-7066 - February 24, 1984) El Paso County, Colorado	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators: Burners on Demolition: Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION #NV84-5014 - MOD. #8 (45 FR 23988 - June 8, 1984) Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas County), Nevada	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 2:		
Carpenters	$16.30	$5.47
Drywall Installer	16.55	5.47
Floor Layers; Patent Scaffold Erectors; Power Saw Operators; Shingler	16.45	5.47
Millwrights	16.90	5.47
Piledrivermen	16.55	5.47

DECISION NO. DC84-3004 MOD. #1 (49 FR 13600-April 6, 1984) DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Footnote d		

DECISION NO. OK84-4050 MOD #1 (49 FR 35477 - September 7, 1984) Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits
CHANGE		
Sheet Metal Workers	$16.15	$3.30

DECISION NO. WI84-5035 - MOD. #1 (49 FR 41146 - October 19, 1984) Green Lake, Marquette, Waupaca, Waushara and Winnebago Counties, Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers:		
Extreme East Part of County Including Lake Winnebago, Menasha and Neenah	$14.81	$5.55
Plumbers:		
Waupaca and Townships of Menasha and Neenah	16.04	3.35

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NO. IL85-5017
COUNTIES: *See Below
DATE: Date of Publication
Supersedes Decision No. IL83-2066, dated Aug. 21, 1983 in 48 FR 36780
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

*Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair & Washington

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Area 1	$17.435	2.90
Area 2	16.91	3.17
Area 3:		
Carpenters	15.405	3.01
Piledrivermen	15.905	3.01
Area 4:		
Carpenters	15.77	2.61
Piledrivermen	16.27	2.61
CEMENT MASONS:		
Area 1	17.405	2.77
Area 2	18.675	
ELECTRICIANS:		
Area 1	18.61	3.46
Area 2	19.20	2.83
Area 3	17.86	3.44
Area 4	17.32	2.29
Area 5	17.85	2.14
IRONWORKERS:		
Area 1	18.05	2.75
Area 2	16.53	2.48
LINE CONSTRUCTION:		
Area 1:		
Linemen & Digging Operator	18.28	2.00+ 13¼%
Groundmen Equipment OP.:		
Class 1	15.59	1.00+ 13¼%
Class 2	13.96	1.00+ 13¼%
Groundman	11.60	1.00+ 13¼%
Area 2:		
Linemen	21.27	11%
Groundman Equipment OP.	18.50	11%
Groundman Truck Drivers	15.10	11%
Groundman	13.82	11%
Area 3:		
Linemen	18.06	3.25+ 3¼%
Groundman Truck Drivers	16.86	3.25+ 3¼%
Groundman Truck Driver with Winch	17.16	3.25+ 3¼%
LINE CONSTRUCTION: (Cont'd)		
Area 4:		
Linemen	$18.10	1.00+8¼%
Groundman Equipment OP.	16.89	1.00+8¼%
Groundman Truck Driver with Winch	12.85	1.00+ 8¼%
Groundman Truck Driver	12.10	1.00+8¼%
Groundman	11.54	1.00+8¼%
PAINTERS:		
Commercial Brush	15.69	1.86
Commercial Spray & Blast	16.69	1.86
Industrial Brush	16.65	1.86
Industrial Spray & Blast	17.65+	1.86
Bridges - Brush	16.90	1.86
Bridges - Spray & Blast	17.90	
LABORERS (HEAVY CONSTRUCTION)		
Area 1:		
Group 1	16.85	.45
Group 2	17.10	.45
Group 3	17.35	.45
Group 4	18.45	.45
Area 2:		
Group 1	17.25	.05
Group 2	17.50	.05
Group 3	17.75	.05
Group 4	18.85	.05
Area 3:		
Group 1	15.70	1.60
Group 2	15.95	1.60
Group 3	16.20	1.60
Group 4	17.30	1.60
Area 4:		
Group 1	14.30	3.00
Group 2	14.55	3.00
Group 3	14.80	3.00
Group 4	15.90	3.00
Area 5:		
Group 1	16.35	1.05
Group 2	16.60	1.05
Group 3	16.85	1.05
Group 4	17.95	1.05
Area 6:		
Group 1	16.95	.35
Group 2	17.20	.35
Group 3	17.45	.35
Group 4	18.55	.35

DECISION NO. IL85-5017
LABORERS (HEAVY CONSTRUCTION) (CONT'D)

	Basic Hourly Rates	Fringe Benefits
Area 7:		
Group 1	17.05	.25
Group 2	14.30	.25
Group 3	17.55	.25
Group 4	18.65	.25
Area 8:		
Group 1	16.65	.65
Group 2	16.90	.65
Group 3	17.15	.65
Group 4	18.25	.65
Area 9:		
Group 1	16.25	1.05
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
Area 10:		
Group 1	17.00	.30
Group 2	17.25	.30
Group 3	17.50	.30
Group 4	18.60	.30
Area 11:		
Group 1	16.25	1.05
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
Area 12:		
Group 1	16.75	.55
Group 2	17.00	.55
Group 3	17.25	.55
Group 4	18.35	.55
Area 13:		
Group 1	16.45	.85
Group 2	16.70	.85
Group 3	16.95	.85
Group 4	18.05	.85
Area 14:		
Group 1	14.65	2.65
Group 2	14.90	2.65
Group 3	15.15	2.65
Group 4	16.25	2.65
Area 15:		
Group 1	16.80	.50
Group 2	17.05	.50
Group 3	17.30	.50
Group 4	18.40	.50
Area 16:		
Group 1	15.90	1.50
Group 2	16.00	1.50
Group 3	16.05	1.50
Group 4	16.15	1.50
Group 5	16.15	1.50
Group 6	16.35	1.50
Group 7	16.40	1.50
Group 8	16.90	1.50
Group 9	17.425	1.50
Area 17:		
Group 1	$14.90	$2.50
Group 2	15.00	2.50
Group 3	15.05	2.50
Group 4	15.15	2.50
Group 5	15.25	2.50
Group 6	15.35	2.50
Group 7	15.40	2.50
Group 8	15.90	2.50
Group 9	16.425	2.50
Area 18:		
Group 1	15.25	2.15
Group 2	15.75	2.15
Group 3	15.775	2.15
Group 4	15.525	2.15
Group 5	16.775	2.15
Group 6	15.775	2.15
Area 19:		
Group 1	15.65	1.75
Group 2	16.15	1.75
Group 3	16.20	1.75
Group 4	16.95	1.75
Area 20:		
Group 1	16.35	1.05
Group 2	16.45	1.05
Group 3	16.60	1.05
Group 4	16.85	1.05
Group 5	17.875	1.05
Area 21:		
Group 1	15.40	1.95
Group 2	15.65	1.95
Group 3	15.70	1.95
Group 4	15.90	1.95
Area 22:		
Group 1	12.40	1.135
Group 2	12.90	1.135
Group 3	12.65	1.135
Group 4	14.00	1.135
Area 23:		
Group 1	14.25	1.90
Group 2	15.75	1.90
Group 3	14.50	1.90
Area 24:		
Group 1	14.70	1.45
Group 2	14.95	1.45
Group 3	15.55	1.45
Group 4	15.20	1.45
Area 25:		
Group 1	15.25	2.15
Group 2	15.50	2.15
Group 3	15.75	2.15
Group 4	16.775	2.15

DECISION NO. IL85-5017 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
LABORERS (HEAVY CONSTRUCTION) (CONT'D)		
Area 26:		
Group 1	$15.70	$1.60
Group 2	15.95	1.60
Group 3	16.20	1.60
Group 4	17.30	1.60
Area 27:		
Group 1	15.95	1.45
Group 2	16.20	1.45
Group 3	16.80	1.45
Group 4	16.45	1.45
LABORERS (HIGHWAY CONSTRUCTION)		
Area 1:		
Group 1	16.95	.45
Group 2	17.05	.45
Group 3	17.20	.45
Group 4	17.45	.45
Group 5	18.475	.45
Area 2:		
Group	17.35	.05
Group 2	17.45	.05
Group 3	17.60	.05
Group 4	17.85	.05
Group 5	18.875	.05
Area 3, 24, 26, & 27:		
Group 1	15.80	1.45
Group 2	15.94	1.45
Group 3	16.05	1.45
Group 4	16.30	1.45
Group 5	17.325	1.45
Area 4:		
Group 1	14.40	3.00
Group 2	14.50	3.00
Group 3	14.65	3.00
Group 4	14.90	3.00
Group 5	15.925	3.00
Area 5, 9, and 11:		
Group 1	16.35	1.05
Group 2	16.45	1.05
Group 3	16.60	1.05
Group 4	16.85	1.05
Group 5	17.875	1.05
Area 6:		
Group 1	17.05	.35
Group 2	17.15	.35
Group 3	17.30	.35
Group 4	17.55	.35
Group 5	18.575	.35

	Basic Hourly Rates	Fringe Benefits
LABORERS (HIGHWAY CONSTRUCTION)		
Area 7:		
Group 1	$17.15	.25
Group 2	17.25	.25
Group 3	17.40	.25
Group 4	17.65	.25
Group 5	18.675	.25
Area 8:		
Group 1	16.75	.65
Group 2	16.85	.65
Group 3	17.00	.65
Group 4	17.25	.65
Group 5	18.275	.65
Area 10:		
Group 1	17.10	.30
Group 2	17.20	.30
Group 3	17.35	.30
Group 4	17.60	.30
Group 5	18.625	.30
Area 12:		
Group 1	16.85	.55
Group 2	16.95	.55
Group 3	17.10	.55
Group 4	17.35	.55
Group 5	18.375	.55
Area 13:		
Group 1	16.55	.85
Group 2	16.65	.85
Group 3	16.80	.85
Group 4	17.05	.85
Group 5	18.075	.85
Area 14:		
Group 1	14.75	2.65
Group 2	14.85	2.65
Group 3	15.00	2.65
Group 4	15.25	2.65
Group 5	16.275	2.65
Area 15:		
Group 1	16.90	.50
Group 2	17.00	.50
Group 3	17.15	.50
Group 4	17.40	.50
Group 5	18.435	.50
Area 16:		
Group 1	15.90	1.50
Group 2	16.00	1.50
Group 3	16.15	1.50
Group 4	16.40	1.50
Group 5	17.425	1.50

DECISION NO. IL85-5017 CONT'D)

	Basic Hourly Rates	Fringe Benefits
LABORERS (HIGHWAY CONSTRUCTION) (CONT'D)		
Area 17:		
Group 1	$14.90	$2.50
Group 2	15.00	2.50
Group 3	15.15	2.50
Group 4	15.40	2.50
Group 5	16.425	2.50
Area 18 and Area 25:		
Group 1	14.75	2.65
Group 2	14.85	2.65
Group 3	15.00	2.65
Group 4	15.25	2.65
Group 5	16.275	2.65
Area 19:		
Group 1	15.65	1.75
Group 2	15.75	1.75
Group 3	15.90	1.75
Group 4	16.15	1.75
Group 5	17.175	1.75
Area 20:		
Group 1	15.50	1.90
Group 2	15.60	1.90
Group 3	15.75	1.90
Group 4	16.00	1.90
Group 5	17.025	1.90
Area 21:		
Group 1	15.40	2.00
Group 2	15.50	2.00
Group 3	15.65	2.00
Group 4	15.90	2.00
Group 5	16.925	2.00
Area 22:		
Group 1	12.45	1.185
Group 2	12.55	1.185
Group 3	12.70	1.185
Group 4	12.95	1.185
Group 5	13.875	1.185
Area 23:		
Group 1	14.70	2.70
Group 2	14.80	2.70
Group 3	14.95	2.70
Group 4	15.20	2.70
Group 5	16.225	2.70

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Master mechanic	$19.87	$2.73
Group 1	18.57	2.73
Group 2	15.14	2.73
Group 3	14.49	2.73
Group 4	14.39	2.73
Group 5	14.14	2.73
Group 6:		
a.	20.72	2.73
b.	21.02	2.73
c.	16.24	2.73
d.	16.74	2.73
TRUCK DRIVERS:		
Group 1	14.275	1.90+a
Group 2	14.675	1.90+a
Group 3	14.875	1.90+a
Group 4	15.125	1.90+a

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AREA DEFINITIONS

CARPENTERS & PILEDRIVERMEN

Area 1: Bond, Calhoun, Greene (S. of Apple Creek), Jersey, Macoupin (S 2/3), Madison, & Montgomery (S 2/3) Cos.
Area 2: Clinton, Monroe, St. Clair, & Washington Cos.
Area 3 Green (except S. of Apple Creek) Co.
Area 4: Macoupin (N 1/3), & Montgomery (N 1/3, inclu. Waggoner, Standard City, & North Thereof) Cos.

CEMENT MASONS

Area 1: Bond, Calhoun, Clinton (W. 1/2, East to but not incl. Carlyle), Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, & St. Clair Cos.
Area 2: Clinton (E 1/2 inclu. Caryle), & Washington Cos.

ELECTRICIANS

Area 1: Bond (E 1/2), Clinton (Huey, Hoffmen & Vic), & Washington (except Venedy Tpw.) Cos.
Area 2: Bond (W 1/2), Clinton (Rem. of Co.), Macoupin (except Brighton, Athensville, Scottville, Girard & areas N. thereof), Madison (except Alton & Vic.), Monroe, Montgomery (except Portion E. of Butler Grove, Grisham, Hillsboro & Raymond Twp.), St. Clair, & Washington (Venedy Twp) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (Brighton Twp.), & Madison (Alton & Vic.) Cos.
Area 4: Macoupin (Athensville, Scottville, Girard & area N. thereof), & Montgomery (NW part inclu. Bois D'Arc, Harvel & Pittman Twps.) Cos.
Area 5: Montgomery (E. of Butler Grove, Grishma, Hillsboro & Raymond Twps.) Cos.

IRONWORKERS

Area 1: Bond, Calhoun, Clinton, Greene (S 1/2), Jersey, Macoupin (Summerville & S. thereof), Madison, Monroe, Montgomery (Litchfield, Hillsboro, & S. thereof, St. Clair, & Washington Cos.
Area 2: Greene (N 1/2), Macoupin (N. of Summerville), & Montgomery (N. of Litchfield & Hillsboro) Cos.

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LINE CONSTRUCTION

Area 1: Bond (E 1/2) & Washington (Okawville & Vendy Twps.) Cos.
Area 2: Bond (W 1/2), Clinton, Macoupin (except N 1/3 & SW Corner), Madison (except E. Alton, Alton, Wood River & Hartford), Monroe, Montgomery (E. of Roundtree, Irving & E. Fork Twps), St. Clair, & Washington (Okawville & Venedy Twps.) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (SW Corner), & Madison (E. Alton, Alton, Wood River & Hartford) Cos.
Area 4: Macoupin (N 1/3) & Montgomery (Rem. of Co.) Cos.

LABORERS

Area 1: Bond Co. (Pocahontas); Macoupin Co. (Gillespie); Washington Co. (Ashley)
Area 2: Macoupin Co. (Carlinville)
Area 3: Clinton Co. (Trenton)
Area 4: Montgomery Co. (Hillsboro)
Area 5: Madison Co. (Glen Carbon)
Area 6: Bond Co. (Greenville); Macoupin Co. (Mt. Oliver)
Area 7: Calhoun Co. (Hardin); Madison Co. (Marine)
Area 8: Madison Co. (St. Jacob & Highland); Washington Co. (Okawville)
Area 9: Macoupin (Stauton)
Area 10: Bond Co. (Sorento); Jersey Co. (Jerseyville)
Area 11: Madison Co. (Troy); Greene Co. (Roodhouse); Montgomery Co. (Litchfield)
Area 12: Madison Co. (Livingston)
Area 13: Washington Co. (Nashville)
Area 14: St. Clair Co. (New Athens)
Area 15: Macoupin Co. (Shipman)
Area 16: Madison (Alton)
Area 17: Madison Co. (Wood River)
Area 18: Madison Co. (Granite City & Vic.)
Area 19: Madison Co. (Collinsville)
Area 20: Madison Co. (Edwardsville)
Area 21: Monroe Co.
Area 22: St. Clair Co. (Freeburg)
Area 23: St. Clair Co. (Belleville)
Area 24: St. Clair Co. (Mascoutah)
Area 25: St. Clair Co. (E. St. Louis & Vic)
Area 26: Clinton Co. Clair Co. (Carlyle)
Area 27: St. Clair Co. (O' Fallon)

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LABORERS - HEAVY CONSTRUCTION

Areas 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,&26
Group 1: General Laborers
Group 2: Botton of Sewer Trenches on final Grading, Laying or Caulking or Preformed sectional sanitary or storm sewer pipe; (including reinforced concrete tile, but not inclu. box culverts, tin whistles or multiplate culverts); Cutting & Burning w/Torch
Group 3: Brick, Plaster, Mason Tenders
Group 4: Dynamite Men

AREA 16 AND AREA 17

Group 1: Common Laborer
Group 2: Laying Sewer & All Sewer Work; Wrapping Pipe and Handling of Tar Pots: & Handling Creosote & Creosote Work on Railroad
Group 3: Open Well Work
Group 4: Well Digging; Machine & Nozzle Op. on Gunnite; Sandblasting; Rip Rapping Work; Cutting & Welding; High Work - 50 ft. to 100 ft.; Hard Rock Mining
Group 5: Sandblasting
Group 6: High Work over 100 ft.
Group 7: Hooker on Hard Rock Mining; Hod Carrier
Group 8: Reinforced Concrete Stack Work by Composite Crews, except footing or bases
Group 9: Handling & Blasting of Dynamite

AREA 18

Group 1: General Laborers
Group 2: Brick, Mason and Plaster Tenders
Group 3: Oxygen Lancing
Group 4: Cutting, Burning, & Welding
Group 5: Dynamiting & Power Man
Group 6: Tender w/Dynamiting & Powder Man

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LABORERS - HEAVY CONSTRUCTION (CONT'D)

AREA 19

Group 1: General Laborers
Group 2: Mason Tenders, Plaster Tender
Group 3: Dynamite Man Tender
Group 4: Dynamite Man

AREA 20

Group 1: General Laborers
Group 2: Men Working on Sewer Work from Building to Main Sewer; Water lines and Conduit Work; Main Sewer Top Men; Asphalt & Mastic Paving
Group 3: Men Working in Main Sewer Ditch; Men Handling Cutting Torch
Group 4: Mason & Plasterer Tenders
Group 5: Dynamite & Powder Men

AREA 21

Group 1: General Laborer
Group 2: Air Tools, Cutting Torch & Welding (not inclu. Jackhammer), Bottom of Sewer Trenches on the Final Grading, Laying or Caulking of Preformed Sectional Sewer Pipe, High Work 50 ft. or more, (only where free fall is 50' or more)
Group 3: Cooking of Mastic, Coal Tar Derivatives, or Handling of Creosoted Materials
Group 4: Dynamite & Blasting (4 hr. min.); Mason Tender & Plasters' Tender

AREA 22

Group 1: Common Laborer
Group 2: Brick, Plaster & Mason Tenders
Group 3: Workmen Cutting & Burning w/Torch; Men Working on Bottom of Sewer
Group 4: Dynamite Men

AREA 23

Group 1: Common Laborer
Group 2: Dynamite Men & Powder Men
Group 3: Burning & Cutting w/Torch; Raking or Luting Asphalt

AREA 24 AND AREA 27

Group 1: Common Laborer
Group 2: Men Working on Bottom doing Caulking, Laying or Final Grading for sectional sewer pipe
Group 3: Dynmaite Men
Group 4: Masons & Plasterers' Tenders

DECISION NO. IL85-5017

LABORERS - HEAVY CONSTRUCTION (CONT'D)

AREA 25

Group 1: General Laborer; Diamond Point Drill Operator
Group 2: Septic Tanks, Cess Pools or Dry Wells, new or old; Sandblasting Work; Handling Creosoted Materials, Raking or Luting Asphalt; Burning & Cutting with Torch; Working Labor Forceman; Feeders, Mixers & Nozzle Men or Gunnite
Group 3: Hod Carriers
Group 4: Dynamite and Powder Men

LABORERS (HIGHWAY CONSTRUCTION)

ALL AREAS

Group 1: General Laborers
Group 2: Asphalt raker; & Applying, Cooking & Heating of all Mastic; Weighman on Asphalt Platform
Group 3: Men on bottom of Sewer Trenches on the Final Grading, Laying oir Caulking of performing Pipe (including reinforced concrete tile but not including box culverts), Tin Whistles, Multi-plate Culverts
Group 4: Brick Mason Tender
Group 5: Dynamite Men

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POWER EQUIPMENT OPERATORS

Group 1: Cranes, draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers (requiring oilers), Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't. Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 drum or more (where oiler or fireman is required), Hoists-2 drum or more (where oiler or fireman is not required) Hydraulic Backhoes, Ditching Machines or Backfiller (not required oilers) Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boats Oprs. (25' & over), Motor Grades or Pushcats, Scoops or Tournapulls, Bulldozers, Endloaders or Fork-lifts, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drills (other than derrick type) 1-drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor only), Firemen on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machines, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft., conveyors (1), Distribution Oprs., On Trucks, Siphons or Jets (1) Winches Heads or Apparatuses (1), Light Plants (1) Mixers (under 2 bags)
Group 2: Air Commpressor (1), Water Pumps regardless of size (1) Welding machines (1)
Group 3: Firemen and Asphalt Spreader Oilersd
Group 4: Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)
Group 5: Oilers
Group 6: a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

TRUCK DRIVERS

Group 1: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

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TRUCK DRIVERS (CONT'D)

Group 2: 2 or 3 Axles hauling more than 9 tons, but hauling less thxles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanic & Working Foreman; & Water Pulls

Group 4: Drivers on Oiler Distrbutors & Drivers on Semi-Lowboys when moving equipment

FOTNOTES:
a. 55.00 Per Week

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ILLINOIS

COUNTIES: BOONE, DEKALB, DUPAGE, KANE, KENDALL, LAKE, MCHENRY & WILL

DECISION NUMBER: IL85-5018

DATE: Date of Publication

Supersedes Decision Number IL83-2014 dated March 4, 1983, in 48 FR 9432

DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; PILEDRIVERMEN:		
Boone County	$14.87	5.10
DeKalb Co.	15.58	2.52
DuPage & Lake Co	16.75	3.78
Kane, Kendall & McHenry Cos	14.00	2.35
Will Co.	15.88	2.35
CEMENT MASONS:		
Boone Co.	15.42	3.95
DeKalb, Kane (S. part), and Kendall Cos.	16.80	3.81
DuPage Co.	16.45	4.48
Kane (North Part), McHenry	16.19	3.74
Lake Co.	16.50	4.40
Will Co.	17.31	4.05
ELECTRICIANS:		
Boone & DeKalb (Except Sandwich Twp)	18.20	2.25+3%
DeKalb (Sandwich Twp), Kane (Aurora, Sugar Grove, Big Rock, Kaneville, Blackberry, Batavia, Geneva Twps & City of St Charles) & Kendall Cos	16.90	20%
DuPage Co.	17.78	28%
Kane (Remainder) & McHenry Cos	18.35	3.56
Lake Co.	17.86	29%
Will Co.	18.50	2.60+ 3.6%
IRONWORKERS:		
Boone, DeKalb (Except S.E.), McHenry (N.W.) Cos	17.02	5.625
DeKalb (Remainder), DuPage (Except Argonne & Vic.), Kane, Kendall (N.), McHenry (S.E. part) Cos	20.17	3.085
DuPage (Argonne & vic.), Kendall (S. part) & Will Cos	16.49	3.97
Lake & McHenry (Hebron, Woodstock & East thereof) Cos	17.68	5.56
LINE CONSTRUCTION:		
Boone, DeKalb, DuPage, Kane, Kendall, Lake & McHenry Cos:		
Lineman; Digger Op. & Crane 15 tons or over	17.40	.65+11½%
Equip. Op. Semi-Trunk Driver	14.76	.65+11½%
Groundman Truck Driver	11.76	.65+11½%
Groundman	11.34	.65+11½%
LINE CONSTRUCTION (Cont'd):		
Will Co:		
Lineman, Equipment Operator	17.50	20.65%
Groundman	12.50	20.65%
PAINTERS:		
Boone Co:		
Brush; Roller	15.97	2.35
Open Structural Steel	16.22	2.35
Spray	16.47	2.35
Sandblasting	16.97	2.35
DeKalb, DuPage, Kane, Kendall & McHenry Cos:		
Brush, Spray, Sandblasting	14.45	2.71
Lake Co:		
Brush	14.50	1.87
Will Co:		
Brush	14.70	2.45
Bridges with:		
Butt Plates, Handrails	14.70	2.45
Superstructures	13.70	2.45
W/O Superstructures	13.20	2.45
TRUCK DRIVERS:		
Boone Co:		
1-3 Axles	14.87	4.00
4 Axles	15.02	4.00
5 Axles	15.22	4.00
6 Axles	15.42	4.00
Remaining Counties:		
1-3 Axles	15.70	b
4 Axles	15.85	b
5 Axles	16.06	b
6 Axles	16.25	b
LABORERS		
DeKalb Co:		
Group 1	13.39	3.515
Group 2	13.64	3.515
DuPage, Lake & Will Cos:		
Group 1	13.90	1.92
Group 2	13.975	1.92
Group 3	14.05	1.92
Group 4	14.175	1.92
Group 5	13.90	1.92
Group 6	14.025	1.92
Group 7	14.125	1.92
Group 8	14.25	1.92

	Basic Hourly Rates	Fringe Benefits
LABORERS (Cont'd):		
Boone, Kane, Kendall & McHenry:		
Group 1	$12.25	$1.92
Group 2	12.30	1.92
Group 3	12.35	1.92
Group 4	12.40	1.92
Group 5	12.50	1.92
Group 6	12.60	1.92
POWER EQUIPMENT OPERATORS:		
Group 1	18.05	5.25
Group 2	17.50	5.25
Group 3	16.35	5.25
Group 4	14.95	5.25
Group 5	13.75	5.25
LANDSCAPE WORK:		
DuPage, Kane, Lake, McHenry and Will Cos:		
Plantsman	8.18	c
Truck Driver (Tractor-Trailer, 3 or more Axles), and Equipment Operator	8.66	c
Truck Driver (Single axle)	8.24	c

CLASSIFICATION DESCRIPTIONS

LABORERS: DeKalb County:

GROUP 1: Common Laborer; Carpenter Tender; Tool Cribman; Fireman or Salamander Tender; Gravel Box Man, Dumpmen & Spotters; Form handlers; Material handlers; Fencing laborers; Cleaning lumber; Pit men; Landscaper; Unloading explosives; Laying of sod; Planting of trees; Removal of trees; Asphalt workers with machine & layers; Asphalt plant Laborers; Wrecking; Fireproofing; Driving of stakes, Stringlines for all machinery; Window cleaning

GROUP 2: Handling of materials harmful to skin or clothing; Track laborer; Cement handler; Chloride handler; Unloading & laborers with steel workers & re-bars; Concrete workers, wet; Tunnel tenders in free air; Batch dumper; Mason tender; Kettle & tar men; Tank cleaner; Plastic installer; Scaffold worker; Motorized buggies or motorized unit used for wet concrete or handling of building materials; Laborers with de-watering systems; Sewer workers plus depth; Vibrator operators; Cement silica, clay, fly ash, Lime & plasters, Handlers (bulk or bag); Cofferdam workers plus depth; Concrete paving, placing, cutting & tying of reinforcing; Deck hand, dredge hand and shore laborers; Bankmen on floating plant; Grade checker; Power tools; Front end man on chip spreader; Caisson worker plus depth; Gunnite nozzle man; leadman on sewer work; Welders, cutters, burners & torchmen; Chainsaw operator; Jackhammer & drill operator; Layout man and/or tile layer; Steel form setter; Air tamping hammermen; Signal man on crane; Concrete saw; Screenman on asphalt paver; Tending masons with hot material or where foreign materials are used; Mortar mixer operator; Multiple concrete duct - leadman; Lutenan; Asphalt raker; Curb asphalt machine operator; Ready mix scaleman, permanent, portable or temporary plant; Laborers handling masterplate or similar materials; Laser beam operator; Concrete burning machine operator; Coring machine Operator; Plaster tender; Underpinning and shoring of buildings; Pump men; Manhole and catch basin; Dirt & stone tamper; Hose man on concrete pump.

LABORERS: Boone, McHenry, Kane, & Kendall Counties:

Group 1: Common laborer, Asphalt laborer, Asphalt plant laborer, Stripping laborer, clipper type concrete saw, self-propelled saws, laser beam
Group 2: Air Tampers & vibrators
Group 3: Mortar & concrete mixers
Group 4: Stringline & form setter; Torchman (demolition), Sheeting & cribbing, Black top rakers & lutenan, Machine screenmen
Group 5: Chain saw man, Jackhammer man, Drillman, concrete breaders & air space, Dynamite handlers (helpers)
Group 6: Tunnel Laborers, Tile Layers & Bottom Men
Group 7: Caisson Diggers, Dynamiters

CLASSIFICATION DESCRIPTIONS

LABORERS: DuPage, Lake & Will Counties:

Group 1: Common Laborer; Tenders; Material expeditor (asphalt plant); Street paving, Grade separation, sidewalk, curb & gutter, strippers & all Laborers not otherwise specified

Group 2: Asphalt tampers & smoothers; Cement gun

Group 3: Cement gun nozzle (laborers) gunnite

Group 4: Rakers & Lutemen; Machine-screenmen; Kettlemen; Mixermen; Drum-men; Jack-hammermen (asphalt); Paintmen; Mitre box spreaders; Laborers on birch, overman & similar spreader equipment; Laborers on Apaco; Laborers on air compressors; Paving form setters; Jackhammermen (concrete); Power driven concrete saws; other power equip.

SEWER & TUNNEL WORK:

Group 5: Top Laborers; All laborers not otherwise specified

Group 6: Concrete & Steel setters

Group 7: Cement carriers; Cement Mixers; Concrete repairman; Mortar men; Scaffold men and second bottom men

Group 8: Air Trac Drill Operators; Bottom men; Bracers-Bracing; Bricklayer tenders; Catch basin diggers; Drainlayers; Dynamiters; Form men; Jackhammer men; Pipelayers; Rodders; Welders & Burners; Well point system men

POWER EQUIPMENT OPERATORS:

Group 1: Asphalt plant; Asphalt heater & planer combination; Asphalt spreader; Auto-grader; Belt loader; Caisson rigs; Car dumper; Central Redi-mix plant; Combination backhoe front end loader 1 yd & over; Concrete breaker truck mounted; Concrete con-veyor; Concrete paver over 27E cu ft; Concrete placer; Concrete tube float; Cranes, all attachments; Cranes, Hammerhead, Linden, Peco & similar; Crater crane; Derricks; Derrick boats; Derricks, traveling; Dredges; Field mechanic-welder; Formless curb & gutter machine; Gradall & similar; Grader, elevating; Motor grader, motor patrol, auto patrol, form grader, pull grader, subgrader; Guard rail post driver truck mounted; Roto mill grinder; Slip form paver; Soil test drill rig truck mounted; Straddle Buggy; Hydraulic telescoping form (tunnel); Tractor drawn belt loader with or without attach. Pusher; Tractor with boom; Raised or blind hole (tunnel shaft) drill; Underground boring and/or mining machines under 5 ft; Wheel excavator; Widener (Apsco)

Group 2: Batch plants; Bituminous mixer; Bobcats over 3/4 cu yds; Boiler & throttle valve; Bulldozers; Car loader trailing conveyors; Combination backhoe front end loader machine under 1 cu yd; Compressor & throttle valve; Concrete breaker or hydrohammer; Concrete grinding machine; Concrete mixer or paver 7S series to & inclu. 27 cu ft; Concrete spreader; Concrete curing machine; Burlap machine; Belting machine & sealing machine; Finishing machine, concrete; Greaser engineer; Highlift shovels or front-end loaders; Hoist - sewer dragging machine; Hydraulic boom trucks, all attachments; Locomotives, Dinky; Pumpcretes, squeere cretes - screw type pumps, gypsum bulker & pump; Roller, asphalt; Rotary snow plows; Rototiller, Seaman, etc, self-propelled; Scoops, tractor drawn; Self-propelled compactor spreader - chip -stone, etc; Scraper - prime mover in tandem (add $1/hr each machine attached) Tank car heater; Tractors, push, pulling sheeps foot, disc, compactor, etc, Tug boats.

CLASSIFICATION DESCRIPTIONS

POWER EQUIPMENT OPERATORS (Cont'd):

Group 3: Boilers; Brooms, all power propelled; Cement supply tender; Concrete mixer (2 bags & over); Conveyor, portable; Farm-type tractors used for mowing, seeding, etc; Firemen on boilers; Forklift trucks; Grouting machine; Hoists, automatic; Hoists, all elevators; Hoists, tugger single drum; Jeep diggers; Pipe jacking machine; Post hole digger; Power saw, concrete; Pug mills; Rollers, other than asphalt; Steam generators; Stone crushers; Stump machine; Winch trucks with "A" frame; Work boats, tamper-form-motor driven

Group 4: Air compressor; Asphalt spreader backend man; Combination - small equipment operator; Generators; Heaters, mechanical; Light plants (1 through 5); pumps over 3" (1 to 3 not to exceed a total of 300 ft); Pumps, well points; Tractaire; Welding machines (2 through 5); Winches, 4-small electric drill winches; Bobcats 3/4 cu yd and under

Group 5: Oilers

FOOTNOTES:

a. Paid Holidays: Memorial Day; Independence Day; Labor Day; Thanksgiving Day;

b. $116.00 per week

c. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & Christmas Day. One year's service - one week paid vacation; two or more years of service - two weeks paid vacation

UNLISTED CLASSIFICATIONS NEEDED FOR WORK NOT INCLUDED WITHIN THE SCOPE OF THE CLASSIFICATIONS LISTED MAY BE ADDED AFTER AWARD ONLY AS PROVIDED IN THE LABOR STANDARDS CONTRACT CLAUSES (29 CFR, 5.5 (a)(1)(ii)

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Kent
DECISION NUMBER: MI85-5019 DATE: Date of Publication
Supersedes Decision No. MI84-5043 dated December 28, 1984 in 49 FR 50557
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 7.50	
BOILERMAKERS	11.07	$3.83
BRICKLAYERS & STONEMASONS	11.18	
CARPENTERS	7.72	
CEMENT MASONS	10.77	
ELECTRICIANS	13.00	1.23+ 9%%
ELEVATOR CONSTRUCTORS	9.90	.915+ 4%+a+b
IRONWORKERS:		
Structural & Ornamental	5.86	
Reinforging	5.92	
LABORERS - Unskilled	7.01	
PAINTERS - Brush	12.00	1.07
PAINTERS - Tapers	12.25	1.07
PLASTERERS	10.00	
PLUMBERS & STEAMFITTERS	14.89	2.22
ROOFERS	8.32	
SHEET METAL WORKERS	13.75	4.23
Truck Drivers	8.12	
POWER EQUIPMENT OPERATORS:		
Backhoe Operator	9.13	
Bulldozer Operator	9.20	
Crane Operator	9.25	
Front End Loader	7.61	
WELDER: Receive rate prescribed for craft performing work to which welding is incidental.		

	Basic Hourly Rates	Fringe Benefits

FOOTNOTES:
a. 6 Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked more than 5 years & 2% for employee who has worked less than 5 years.
c. $5.00 per month - Life Insurance

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: Bucks, Chester, Delaware, Montgomery & Philadelphia

DECISION NO. PA85-3012

DATE: Date of Publication

Supersedes Decision No.: PA84-3041 dated November 9, 1984, in 49 FR 44855

DESCRIPTION OF WORK: Building Construction, including single family homes and garden type apartments up to and including 4 stories (Chester County Building, Construction Only)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Zone 1	18.75	4.45
Zone 2	16.32	4.455
BOILERMAKER	18.88	2.865
BRICKLAYERS:		
New Residential: Under 4 stories	16.12	2.57
All other work:		
Zone 1	16.01	3.82
Zone 2	16.06	4.39
Zone 3	16.02	3.78
CARPENTERS:		
Residential Under 4 Bucks, Delaware & Montgomery Counties	13.68	4.21
Philadelphia County	15.72	5.71
All other work	15.82	5.61
CEMENT MASONS:		
Zone 1	14.00	6.54
Zone 2	14.60	2.75
Zone 3	10.79	1.65
FINAL CLEAN-UP CREW:		
When construction cleaning completed and general contractor and all construction sub-contractors are off the job:		
Janitorial Cleaner	4.68	.43+a+b
Window Cleaner	5.99	.43+a+b
DRYWALL FINISHERS	15.03	5.69
ELECTRICIANS		
Zone 1		
Commercial	18.67	28%
Residential up to and including 4 stories	17.50	27%
Zone 2		
Commercial	19.59	16.5%
Residential up to and including 3 stories	17.79	15.5%
Zone 3		
Commercial	18.82	22½%
Residential up to and including 3 stories	11.40	22½%
Zone 4		
Commercial	17.92	2.48+ 3½%
Zone 5		
Commercial	17.38	1.89+3%
Zone 6		
Commercial	16.70	1.57+ 10%
Zone 7		
Commercial	15.35	1.84+3%
Residential up to and including 4 stories	8.50	.84+3%
Zone 8		
Commercial	19.68	16 3/4 %+1.00
Zone 9		
Commercial	14.15	.64+3%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	19.36	3.29+ c+d
Elevator Constructors Helpers	70%JR	3.29+ c+d
Elevator Constructors Helpers (Prob.)	50%JR	
GLAZIERS		
Zone 1	16.04	3.55
Zone 2	14.04	1.465
IRONWORKERS:		
Zone 1	16.20	8.00
Zone 2	16.70	5.75
Zone 3		
Structural&Ornamental	16.75	6.80
Reinforcing Steel Mesh Rebar work	17.27	6.30
Rigger, Machinery Moving	17.70	4.20
Zone 4		
Structural, Ornamental	17.40	4.25
Reinforcing Steel, Mesh		
Machinery & Rebar Work	16.53	4.25
All Pre-Eng. Bldg. one evevation of 25 ft. or less, Overhead Doors,		
Chainlink type fences	14.79	4.25
All other types fences	17.40	4.25

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	Basic Hourly Rates	Fringe Benefits
LABORERS:		
New Residential under 4 Stories	9.08	1.775
All other work		
Class I	13.05	3.85
Class II	13.15	3.85
Class III	12.90	3.85
Class IV	13.20	3.85
Class V	13.45	3.85
Class VI	12.49	3.85
LANDSCAPE LABORERS:		
Class I	8.30	1.80+e
Class II	8.80	1.80+e
LATHERS		
Zone 1	15.82	5.61
Zone 2	16.82	3.23
Zone 3	11.61	1.01
Zone 4	11.40	.57
LEAD BURNERS	10.75	.66+f
LINE CONSTRUCTION		
Zone 1		
Linemen	18.04	.80+6%
Groundmen	10.82	.80+6%
Winch truck operator	12.63	.80+6%
Zone 2		
Linemen, cable splicers, heavy equipment operator, truck driver	15.27	.80+10 3/4%
Groundman, winch op.	12.22	.80+10 3/4%
MARBLE SETTERS	14.20	3.50
MARBLE FINISHERS	11.62	3.85
MILLWRIGHTS	16.32	5.61
PAINTERS:		
Zone 1		
Brush	15.00	2.78
Spray, steel & swing	15.55	2.78
Roller	15.00	2.78
Zone 2		
Commercial, brush	15.38	3.40
Commercial, spray	15.88	3.40
Zone 3		
Brush	12.15	2.25
Steel and spray	13.20	2.25
Roller	12.15	2.25
Zone 4		
Brush	15.56	3.48
Steel	16.31	3.48
PILEDRIVERMEN	15.97	6.81+g
POINTERS, CAULKERS AND CLEANERS	15.30	4.20
PLASTERERS:		
Zone 1	18.24	1.53
Zone 2	10.81	1.66
Zone 3	15.37	.91
PLUMBERS:		
Zone 1	19.78	3.94
Zone 2	18.38	3.59
ROOFERS:		
Shingle, slate, and tile	13.92	2.25
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools & equipment; clean-up debris	6.25	2.25
All other work	19.57	2.93+h
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	8.25	2.93+h
SHEET METAL WORKERS	18.72	4.95
SOFT FLOOR LAYERS	15.53	5.91
SPRINKLER FITTERS		
Zone 1	16.92	3.23
Zone 2	15.62	2.50
STEAMFITTERS		
Zone 1	19.56	4.16
Zone 2	18.16	3.81
STONEMASONS		
Zone 1	15.47	3.85
Zone 2	16.02	3.80
Zone 3	15.21	3.32
Zone 4	14.20	3.50
SOUND AND PUBLIC ADDRESS INSTALLATION TECHICIANS (Existing building only)	9.50	3%
TERRAZZO WORKERS	15.32	2.33
TERRAZZO FINISHERS	11.60	3.85
TILE SETTERS	13.35	4.80
TILE SETTERS FINISHERS	11.39	3.85
POWER EQUIPMENT OPERATORS		
Group 1	17.82	26.6% +j
Group 2	17.56	26.6% +j
Group 3	16.10	26.6% +j
Group 4	15.79	26.6% +j

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Continued)		
Group 5	14.02	26.6% +j
Group 6	13.51	26.6% +j
BUILDING CONSTRUCTION TRUCK DRIVERS		
Class I	12.05	2.8725 +k+l
Class II	12.15	2.8725 +k+l
Class III	12.35	2.8725 +k+l
TRUCK DRIVERS: HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
Class 1	11.90	2.8725 +o+p
Class 2	12.00	2.8725 +o+p
Class 3	12.20	2.8725 +o+p

Paid Holidays (Where Applicable): A-New Year's Day; B-Memorial Day; C-Indenpence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: New Year's Day; Lincoln's Birthday; Good Friday; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day, plus vacation pay for employee who have been employed by the empolyer for one year may receive five paid holidays; two years ten paid holidays, five years twelve paid holidays; ten years fifteen paid holidays, eighteen years twenty paid holidays, twenty five years twenty five paid holidays.

b. Funeral Leave: Employee's shall be granted three consecutive calendar days in the case of a parent, spouse, child, brother, or sister of an employee, if the employee normal time off falls within the three day period, the employee will be reimbursed for that portion of time normally scheduled for work, should death occur during an employee's schedule vacation, there will be no funeral leave payment. Funeral leave under no circumstances results in a change in employee's basic weekly salary.

c. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

d. Holidays: a through f, plus the Friday after Thanksgiving Day.

e. Holidays: July 4th; Labor Day and Thanksgiving Day.

f. Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

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FOOTNOTES CONTINUED

g. Holidays; A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 45 full days for the same employer during the 120 calendar days prior to the holiday & is available for work the day preceding & following the holiday.

h. Holiday: Election Day.

j. Paid Holidays: A through F, providing the employee works the day before and after the holiday.

k. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) calendar year. During each two(2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years of more senority shall be eligible for two (2) weeks of vacation.

l. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

o. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation.

p. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the schedule work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows; Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all personal holidays.

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WELDERS - rate prescrived for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1)(ii))."

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durhan, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum Upper Makefield and Yardley Townships in Bucks County

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenhan Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

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AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest on North Lane to Schuylkill River and continuing southeast in a line to the Spring Mill Road and southwest on the Spring Mill Road to Delaware County.

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

Philadelphia County - in its entirety.

ZONE 2
Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, Southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest onthe Penllyn and Blue Bell Pikes to the Wissahickon Creek to the Butler Pike, southwest Wissahickon Creek to the Butler Pike, southwest on the Butler Pike, to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 2 CONT'D
Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Beehive Road to the Township Line at Mervine Street in the State Of Pennsylvania.

ZONE 3
Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 betwen U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4
Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5
Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwich, South Coventy, Valley Twps. and Coatesville.

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps., Pottstown.

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 6
Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7
Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8
Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmevilla Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

ZONE 9
Chester County - That portion of Sadsbury and West Sadsbury Township north of U. S. Highway 30.

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AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Surham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwick, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greeland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Mongtomery County

AREA COVERED BY IRONWORKERS ZONES

Zone 1 - Bucks County

Zone 2 - Remainder of Chester County

Zone 3 - Delaware, Philadelphia Counties, Remainder of Montgomery County

Zone 4 - Townships in Chester County, Parkersburg, E. Sadsburg, W. Sadsburg, Pomeroy, Wagontown; W. Clan, Barren; Honeybrook; birdel; Rockville; Icedale; E. Brandywine; W. Brandywine; Cognog, Lyndel; Cupola; Wyebrook; Glen Moore; Marsh, Nantmeal; East Nantmeal; Nantmeal Village; West Vincent; Kimberton; Chester Spring; Pikeland; East Vincent; East Warwick; West Warwick; St. Peters; East Coventry; West Coventry; Cedarville; Pottstown and Flicks Lock; Pennburst; Spring City; Parker Ford;

Townships in Montgomery County; Palm; Hopenville; Hanover; Upper Hanover; New Hanover; E. Greenfield; Pennsubrg; Perkiomen; Niantio; Douglas; Congo; Sassamansville; New Perkionenville; Marlboro; Greenland; Tylerport; Ford; Greenland; Roytown; Englesville; Gilbertsville, Upper Woxall; Bergey; E. Salford; W. Salford; Anise; Obelish; Lower Pottsgrove; Upper Pottsgrove; Fagleysville; E. Zieglerville; W. Zieglerville; E. Limerick; W. Limerick; and Royerford

LABORERS CLASSIFICATIONS DEFINITIONS REHABILITATION AND ALL OTHER WORK OTHER THAN RESIDENTIAL

CLASS I - Striping & dismantling concrete form work, loading, carry 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building scaffolds, raking shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard Workers

LANDSCAPE LABORERS CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man and mulcher nozzle man

AREA COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quarkertown, Springfield, Durham, Riegelsville, Bridgetown, Nockamixon, Tinicum, Plumstead, Dublin, Bedminister, Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Remainder of Bucks County, Chester, Delaware, Montgomery, Philadelphia Counties

ZONE 2 - Buck county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 113, north on Tr 113 to Tr 232 at Anchor Inn; northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Borough of New Hope and Bristol are included.

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Haverford, Newton, Randnor, Maple, Springfield, Upper Darby, Barby, Ridley, Tinicum & Yeondon Townships in Delaware County, Cheltenahm, Abington, Uper and Lower Morland, Springfield Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delawre County

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ARE COVERED BY PAINTERS ZONES CONTINUED

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks, Delaware & Philadelphia Counties; remainder of Chester County, Remainder of Montgomery County

ZONE 2- Pennsburg Township in Montgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware, Chester, Montgomery, Philadelphia Counties; remainder of Bucks County

ZONE 2 - Bridgton, Durnham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield Townships in Bucks County

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delaware & Montgomery Counties

ZONE 2 - Philadelphia County

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia Counties, Remainder of Bucks County

ZONE 2 - Bucks County; Townships of Bridgton, Durham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

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POWER EQUIPMENT OPERATIONS CLASSIFICATIONS

WAGE GROUP I - Handling steel and stone in connection with erection, cranes doing hook work, any machines handling machinery, cable spinning machine, helicopters, and machines similar to to the above.

WAGE GROUP II - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, paver 21E and over, all types over-head cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders, boat captain, tandems scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drillmaster type), fork lift (20 ft. and over), batch plant with mixer, scrapers & tournapulls, rollers (high grade finishing), mechanic-welder, spreaders, bulldozers and tractors, and machines similar to the above.

WAGE GROUP III - Conveyors (except building conveyors), building hoists (single drum), asphalt plant engineers, high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, ditch witch type trencher, motor patrol, concrete breaking machines, rollers, and machines similar to the above.

WAGE GROUP IV - Seaman pulverizing mixer, tireman on power equipment, farm tractors, fine grade machines, form line graders, road finishing machines, power broom (self-contained), seed spreader, grease truck, and machine similar to the above, maintenance engineer (power Boat)

WAGE GROUP V - Conveyors (building), welding machines, heaters, wellpoints, pumps, compressors, and machines similar to the above.

WAGE GROUP IV - Fireman, oilers and deck hands (personnel boats), grease truck helpers

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING CONSTRUCTION)

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body Truck (tandem)

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TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS (CONTINUED)

CLASS III - Euclid type-off highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

TRUCK DRIVERS, HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION CLASSIFICATION DEFINITIONS

CLASS 1 - Helpers, Stake Body Truck (single axle, dumpster)

CLASS 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO. VA85-3011
COUNTIES: SEE BELOW*
DATE: DATE OF PUBLICATION
Supersedes Decision No. VA85-3006 dated January 18, 1985 in 50 FR 2765.
DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).

*The Independent Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth & Virginia Beach.

	Basic Hourly Rates	Fringe Benefits
ASPHALT RAKER	5.76	
CARPENTERS, STRUCTURE	8.25	
CARPENTER HELPER, STRUCTURE	5.67	
CONCRETE FINISHER	7.44	
CONCRETE FINISHER HELPER	5.45	
ELECTRICIAN	12.85	
FIREMAN	9.05	
FORM SETTER	7.04	
GUARDRAIL/FENCE ERECTOR	5.25	
SIGN ERECTOR	6.50	
IRONWORKER, REINF.	9.56	
IRONWORKER, REINF. HELPER	6.73	
IRONWORKER, STRUCTURAL	10.25	
LABORER, UNSKILLED	4.91	
LANDSCAPE WORKER	4.55	
MECHANIC	7.39	
MECHANIC HELPER	5.95	
PAINTER, BRIDGE	9.52	
PILEDRIVER LEADSMAN	9.63	
PIPELAYER	5.80	
ASPHALT DISTRIBUTOR OPER.	6.15	
ASPHALT PAVER OPERATOR	6.74	
BACKHOE OPERATOR	7.21	
BULLDOZER OPERATOR	6.77	
BULLDOZER OPERATOR UTILITY	9.06	
CONCRETE FINISH MACHINE OP.	7.00	
CONCRETE PAVING MACHINE OP.	6.41	
CRANE, DERRICK, DRAGLINE OPERATOR (1 yd. & Under)	8.97	
CRANE, DERRICK, DRAGLINE OPERATOR (Over 1 yd.)	9.80	
DRILL OPERATOR	5.50	
LOADER OPERATOR (2 yds. & under)	6.58	
LOADER OPERATOR (Over 2 yds.)	6.97	
MOTOR GRADER OPERATOR (Fine Grade)	7.61	
MOTOR GRADER OPERATOR (Rough Grade)	6.95	
OILER GREASER	6.39	
LINE MARKER OPERATOR	6.50	
PILE DRIVER OPERATOR	8.93	
POWER TOOL OPERATOR	8.80	
ROLLER OPERATOR (Rooch)	5.69	
ROLLER OPERATOR (Finish)	5.69	
SCRAPER PAN OPERATOR	5.75	
SLIP-FORM PAVER OPERATOR	6.42	
STABLIZER OPERATOR	5.88	
SUBGRADE MACHINE OPERATOR	6.53	
TRACTOR OPERATOR (Utility)	6.31	
TRUCK DRIVER, HEAVY DUTY (Over 7 c.y.)	5.67	
TRUCK DRIVER (Multi-Rear Axle)	5.05	
TRUCK DRIVER (Single Rear Axle)	5.05	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

[FR Doc. 85-5414 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
March 8. 1985

Part IV

Environmental Protection Agency

40 CFR Part 60

Standard of Performance for New Stationary Sources; Reference Methods; Total Reduced Sulfur; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2741-7]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Total Reduced Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 16A for the determination of total reduced sulfur (TRS) emissions from kraft pulp mills was proposed in the **Federal Register** on June 18, 1981 (46 FR 31904). This action promulgates "Method 16A, Determination of Total Reduced Sulfur Emissions from Stationary Sources," which is to be added to Appendix A of 40 CFR Part 60. The intended effect is to allow all sources in kraft pulp mills that are subject to standards of performance requiring the use of Method 16 to use this as an alternative method. Method 16A offers improvements over Method 16 in that the procedure is simpler and less expensive. Revisions to § 60.285 of Subpart BB to mention Method 16A and facilitate its use in calculating emission rates from smelt dissolving tanks are also being made.

EFFECTIVE DATE: March 8, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* This document for the promulgated test method may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "Method 16A for the Determination of Total Reduced Sulfur Emissions (Proposed June 18, 1981, 46 FR 31904)—Summary of Comments and Responses, EPA 450/3–82–028." The document contains (1) a summary of all the public comments made on the proposed test method and the Administrator's response to the comments, and (2) a summary of the changes made to the test method since proposal.

Docket. A docket, number A–80–38, containing information considered by EPA in development of the promulgated test method, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: Method 16A has been proposed because it offers a procedure that is simpler and less expensive than Method 16. This method is to be used as an alternative method and would apply to all sources in kraft pulp mills that are subject to standards of performance specifying the use of Method 16 for the measurement of TRS. This rulemaking does not impose any additional emission measurement requirements on affected facilities. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Public Participation

This test method was proposed and published in the **Federal Register** on June 18, 1981 (46 FR 31904). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed test method, but no person desired to make an oral presentation. The public comment period was from June 18, 1981, to August 17, 1981. Ten comment letters were received concerning issues relative to the proposed test method. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed test method.

Significant Comments and Changes to the Proposed Test Method

Ten comment letters were received on the proposed test method. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments and subsequent method changes are listed here.

1. One commenter noted that the TRS mass emission rate needed to determine compliance for smelt dissolving tanks could not be calculated using Method 16A. The calculation requires the concentrations of the individual TRS compounds which are not available with Method 16A since all compounds are oxidized and collectively analyzed.

To allow the use of Method 16A, a change in § 60.285(d)(3) has been made to calculate the TRS concentration on an equivalent hydrogen sulfide (H_2S) basis.

2. Several commenters requested that more flexibility be allowed in the sample train calibration system. The use of dry gas meters to make volume determinations was opposed because significant error is introduced when making small measurements by taking the difference between two large gas measurements. It was suggested that certified permeation devices be allowed as an alternative source of standard gas since Method 16 uses permeation tubes. This case would eliminate the need to certify standard gases by Method 11.

The requirements of the proposed calibration system have been modified to allow the use of certified permeation devices. The dry gas meters have been replaced by calibrated rotameters which will simplify the measurement of gas flow and effectively eliminate the measurement error.

3. The sulfur dioxide (SO_2) scrubber was found to be deficient in two areas. The midget impingers are of insufficient volume to accommodate the high levels of condensed moisture present at some facilities, and the specified volume of scrubber solution could not completely remove high levels of SO_2 over extended periods of time.

The proposed scrubber system has been modified to consist of three large Teflon impingers connected in series. The first two impingers contain 100 ml of scrubber solution while the third impinger is initially dry. A requirement to adjust the pH of this solution has also been added.

4. For the analysis procedure, one commenter objected to titrating the entire sample since only one analysis could be performed per sample and a large titration volume would result. This procedure has been changed to reduce the titration volume and to allow duplicate analysis of each sample.

5. It was noted that calcium particulate was encountered while testing one facility and acts as an interference in the analysis. A heated Teflon filter and an upturned probe nozzle have been inserted into the sampling train to effectively remove this interference.

6. Commenters familiar with the operation of the proposed method suggest that 5 percent precision for the system performance check is too stringent. Precision within 10 percent and the option to run the check at the level of the applicable standard ±20 percent would seem more reasonable. The precision limit has been dropped and the option to run this check within 20 percent of the level of the applicable standard will be allowed.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisons of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities because the rulemaking simply adds an alternative test method.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglas insulation, Synthetic fibers, Lime.

Date: February 12, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for this amendment is as follows:

Authority: Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

2. By revising paragraph (d)(1) of § 60.285 to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(1) Method 16 or, at the discretion of the owner or operator, Method 16A for the concentration of TRS.

* * * * *

3. By revising paragraph (d)(3) of § 60.285 to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(3) When determining compliance with § 60.283(a)(4), use the results of Method 2, Method 16 or 16A, and the black liquor solids feed rate in the following equation to determine the TRS emission rate on an equivalent hydrogen sulfide (H_2S) basis.

$$E = (C_{TRS})(F)(Q_{sd})/BLS$$

Where:

E = mass of TRS emitted per unit of black liquor solids (g/kg)(lb/ton).

C_{TRS} = average combined concentration of TRS as determined by Method 16 or 16A during the test period, ppm.

F = 0.001417 g H_2S/m^3 ppm for metric units.

□ = 0.08644 lb H_2S/ft^3 ppm for English units.

Q_{sd} = dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

BLS = black liquor solids feed rate, kg/hr (ton/hr).

* * * * *

3. By amending Appendix A by adding a new method as follows:

Appendix A—[Amended]

* * * * *

Method 16A.—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)

1. *Applicability, Principle, Interferences, Precision, and Bias.*

1.1 Applicability. This method is applicable to the determination of total reduced sulfur (TRS) emissions from recovery boilers, lime kilns, and smelt dissolving tanks at kraft pulp mills, and from other sources when specified in an applicable subpart of the regulations. The TRS compounds include hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.

The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to sulfur dioxide (SO_2). The lower detectable limit is 0.1 ppm SO_2 when sampling at 2 liters/min for 3 hours or 0.3 ppm when sampling at 2 liters/min for 1 hour. The upper concentration limit of the method exceeds TRS levels generally encountered at kraft pulp mills.

1.2 Principle. An intergrated gas sample is extracted from the stack. SO_2 is removed selectively from the sample using a citrate buffer solution. TRS compounds are then thermally oxidized to SO_2, collected in hydrogen peroxide as sulfate, and analyzed by the Method 6 barium-thorin titration procedure.

1.3 Interferences. TRS compounds other than those regulated by the emission standards, if present, may be measured by this method. Therefore, carbonyl sulfide, which is partially oxidized to SO_2 and may be present in a lime kiln exit stack, would be a positive interferent.

Particulate matter from the lime kiln stack gas (primarily calcium carbonate) can cause a negative bias if it is allowed to enter the citrate scrubber; the particulate matter will cause the pH to rise and H_2S to be absorbed prior to oxidation. Furthermore, if the calcium carbonate enters the hydrogen peroxide impingers, the calcium will precipitate sulfate ion. Proper use of the particulate filter described in Section 2.1.3 will eliminate this interference.

1.4 Precision and Bias. Relative standard deviations of 2.0 and 2.6 percent were obtained when sampling a recovery boiler for 1 and 3 hours, respectively.

In a separate study at a recovery boiler, Method 16A was found to be unbiased relative to Method 16. Comparison of Method 16A with Method 16 at a lime kiln indicated that there was no bias in Method 16A. However, instability of the source emissions adversely affected the comparison. The precision of Method 16A at the lime kiln was similar to that obtained at the recovery boiler.

Relative standard deviations of 2.7 and 7.7 percent have been obtained for system performance checks.

2. *Apparatus.*

2.1 Sampling. The sampling train is shown in Figure 16A–1 and component parts are discussed below. Modifications to this sampling train are acceptable provided the system performance check (Section 4.3) is met.

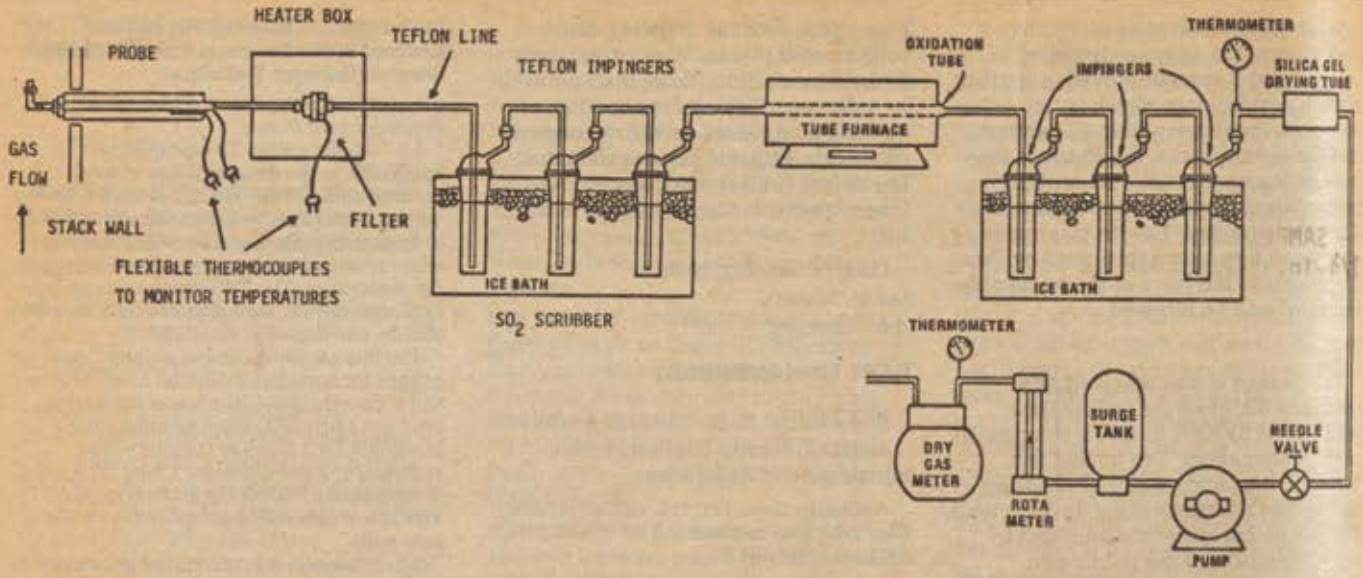

Figure 16A-1. Sampling Train

2.1.1. Probe. Teflon (mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency) tubing, 0.6-cm (¼-in.) diameter, sequentially wrapped with heat-resistant fiber strips, a rubberized heat tape (plug at one end), and heat-resistant adhesive tape. A flexible thermocouple or other suitable temperature measuring device should be placed between the Teflon tubing and the fiber strips so that the temperature can be monitored to prevent softening of the probe. The probe should be sheathed in stainless steel to provide in-stack rigidity. A series of bored-out stainless steel fittings placed at the front of the sheath will prevent moisture and particulate from entering between the probe and sheath. A 0.6-cm (¼-in.) Teflon elbow (bored out) should be attached to the inlet of the probe, and a 2.54-cm (1-in.) piece of Teflon tubing should be attached at the open end of the elbow to permit the opening of the probe to be turned away from the particulate stream; this will reduce the amount of particulate drawn into the sampling train. The sampling probe is depicted in Figure 16A-2.

Top of Illustration

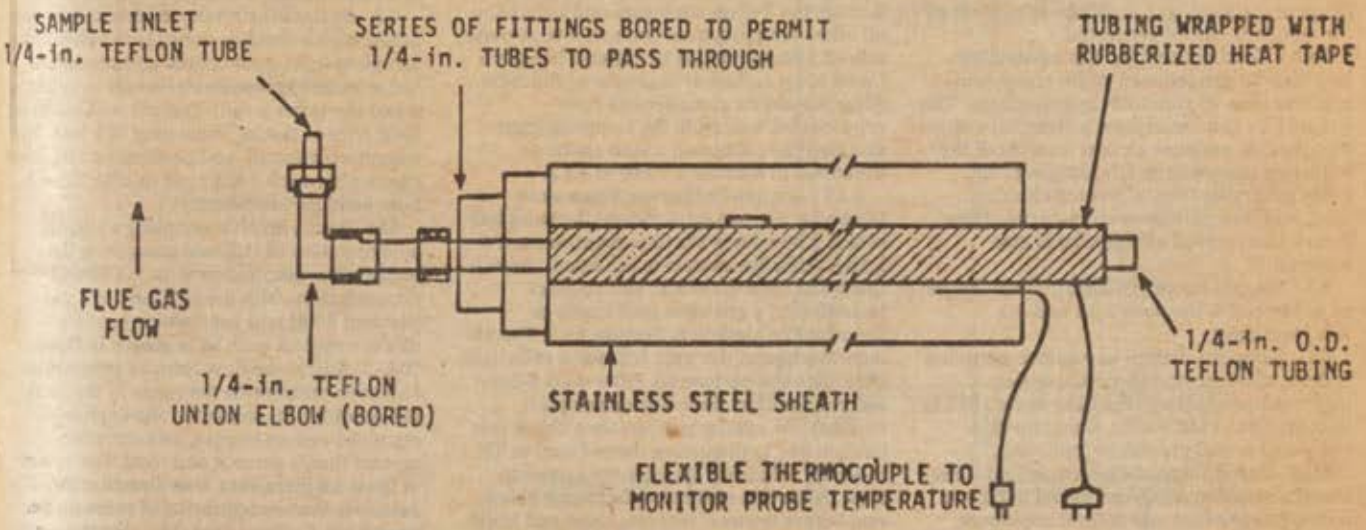

Figure 16A-2. Angled sampling probe

2.1.2 Probe Brush. Nylon bristle brush with handle inserted into a 3.2-mm (⅛-in.) Teflon tubing. The Teflon tubing should be long enough to pass the brush through the length of the probe.

2.1.3 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-μ porosity, Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature sufficient to prevent moisture condensation. A temperature of 121 °C (250 °F) was found to be sufficient when testing a lime kiln under sub-freezing ambient conditions.

2.1.4 SO_2 Scrubber. Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3 mm (⅛ in.) ID and should be immersed to a depth of at least 5 cm (2 in.).

2.1.5 Combustion Tube. Quartz glass tubing with an expanded combustion chamber 2.54 cm (1 in.) in diameter and at least 30.5 cm (12 in.) long. The tube ends should have an outside diameter of 0.6 cm (¼ in.) and be at least 15.3 cm (6 in.) long. This length is necessary to maintain the quartz-glass connector at ambient temperature and thereby avoid leaks. Alternatively, the outlet may be constructed with a 90-degree glass elbow and socket that would fit directly onto the inlet of the first peroxide impinger.

2.1.6 Furnace. A furnace of sufficient size to enclose the combustion chamber of the combustion tube with a temperature regulator capable of maintaining the temperature at 800±100 °C. The furnace operating temperature should be checked with a thermocouple to ensure accuracy.

2.1.7 Peroxide Impingers, Stopcock Grease, Thermometer, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge. Same as in Method 6, Sections 2.1.2, 2.1.4, 2.1.6, 2.1.7, 2.1.8, 2.1.11, and 2.1.12, respectively.

2.1.8 Rate Meter. Rotameter, or equivalent, accurate to within 5 percent at the selected flow rate of 2 liters/min.

2.1.9 Volume Meter. Dry gas meter capable of measuring the sample volume under the sampling conditions of 2 liters/min with an accuracy of ±2 percent.

2.1.10 Polyethylene Bottles. 250-ml bottles for hydrogen peroxide solution recovery.

2.2 Sample Preparation and Analysis. Same as in Method 6, Section 2.3, except a 10-ml buret with 0.05-ml graduations is required and the spectrophotometer is not needed.

3. *Reagents.*

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. When such specifications are not available, the best available grade shall be used.

3.1 Sampling. The following reagents are needed:

3.1.1 Water. Same as in Method 6, Section 3.1.1.

3.1.2 Citrate Buffer. 300 g of potassium citrate (or 284 g of sodium citrate) and 41 g of anhydrous citric acid dissolved in 1 liter of water (200 ml is needed per test). Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required.

3.1.3 Hydrogen Peroxide, 3 percent. Same as in Method 6, Section 3.1.3 (40 ml is needed per sample).

3.1.4 Recovery Check Gas. Hydrogen sulfide (100 ppm or less) in nitrogen, stored in aluminum cylinders. Verify the concentration by Method 11 or by gas chromatography where the instrument is calibrated with an H_2S permeation tube as described below. For Method 11, the standard deviation should not

exceed 5 percent on at least three 20-minute runs.

Alternatively, hydrogen sulfide recovery gas generated from a permeation device gravimetrically calibrated and certified at some convenient operating temperature may be used. The permeation rate of the device must be such that at a dilution gas flow rate of 3 liters/min, an H_2S concentration in the range of the stack gas or within 20 percent of the standard can be generated.

3.1.5 Combustion Gas. Gas containing less than 50 ppb reduced sulfur compounds and less than 10 ppm total hydrocarbons. The gas may be generated from a clean-air system that purifies ambient air and consists of the following components: Diaphragm pump, silica gel drying tube, activated charcoal tube, and flow rate measuring device. Flow from a compressed air cylinder is also acceptable.

3.2 Sample Recovery and Analysis. Same as in Method 6, Sections 3.2.1 and 3.3.

4. *Procedure.*

4.1 Sampling. Before any source sampling is done, conduct two 30-minute system performance checks in the field as detailed in Section 4.3 to validate the sampling train components and procedure (optional).

4.1.1 Preparation of Collection Train. For the SO_2 scrubber, measure 100 ml of citrate buffer into the first and second impingers; leave the third impinger empty. Immerse the impingers in an ice bath, and locate them as close as possible to the filter heat box. The connecting tubing should be free of loops. Maintain the probe and filter temperatures sufficiently high to prevent moisture condensation, and monitor with a suitable temperature indicator.

For the Method 6 part of the train, measure 20 ml of 3 percent hyrdrogen peroxide into the first and second midget impingers. Leave the third midget impinger empty, and place silica gel in the fourth midget impinger. Alternatively, a silica gel drying tube may be used in place of the fourth impinger. Maintain the oxidation furnace at 800±100 ° C. Place crushed ice and water around all impingers.

4.1.2 Citrate Scrubber Conditioning Procedure. Condition the citrate buffer scrubbing solution by pulling stack gas through the Teflon impingers and bypassing all other sampling train components. A purge rate of 2 liters/min for 10 minutes has been found to be sufficient to obtain equilibrium. After the citrate scrubber has been conditioned, assemble the sampling train, and conduct (optional) a leak-check as described in Method 6, Section 4.1.2.

4.1.3 Sample Collection. Same as in Method 6, Section 4.1.3, except the sampling rate is 2 liters/min (± 10 percent) for 1 or 3 hours. After the sample is collected, remove the probe from the stack, and conduct (mandatory) a post-test leak check as described in Method 6, Section 4.1.2. The 15-minute purge of the train following collection should not be performed. After each 3-hour test run (or after three 1-hour samples), conduct one system performance check (see Section 4.3) to determine the reduced sulfur recovery efficiency through the sampling train. After this system performance check and before the next test run, rinse and brush the probe with water, replace the filter, and change the citrate scrubber (recommended but optional).

In Method 16, a test run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours. For Method 16A to be consistent with Method 16, the following may be used to obtain a test run: (1) collect three 60-minute samples or (2) collect one 3-hour sample. (Three test runs constitute a test.)

4.2 Sample Recovery. Disconnect the impingers. Quantitatively transfer the contents of the midget impingers of the Method 6 part of the train into a leak-free polyethylene bottle for shipment. Rinse the three midget impingers and the connecting tubes with water and add the washings to the same storage container. Mark the fluid level. Seal and identify the sample container.

4.3 System Performance Check. A system performance check is done (1) to validate the sampling train components and procedure (prior to testing; optional) and (2) to validate a test run (after a run). Perform a check in the field prior to testing consisting of a least two samples (optional), and perform an additional check after each 3-hour run or after three 1-hour samples (mandatory).

The checks involve sampling a known concentration of H_2S and comparing the analyzed concentration with the known concentration. Mix the H_2S recovery gas (Section 3.1.4) and combustion gas in a dilution system such as is shown in Figure 16A–3. Adjust the flow rates to generate an H_2S concentration in the range of the stack gas or within 20 percent of the applicable standard and an oxygen concentration greater than 1 percent at a total flow rate of at least 2.5 liters/min. Use Equation 16A–3 to calculate the concentration of recovery gas generated. Calibrate the flow rate from both sources with a soap bubble flow tube so that the diluted concentration of H_2S can be accurately calculated. Collect 30-minute samples, and analyze in the normal manner (as discussed in Section 4.1.3). Collect the sample through the probe of the sampling train using a manifold or some other suitable device that will ensure extraction of a representative sample.

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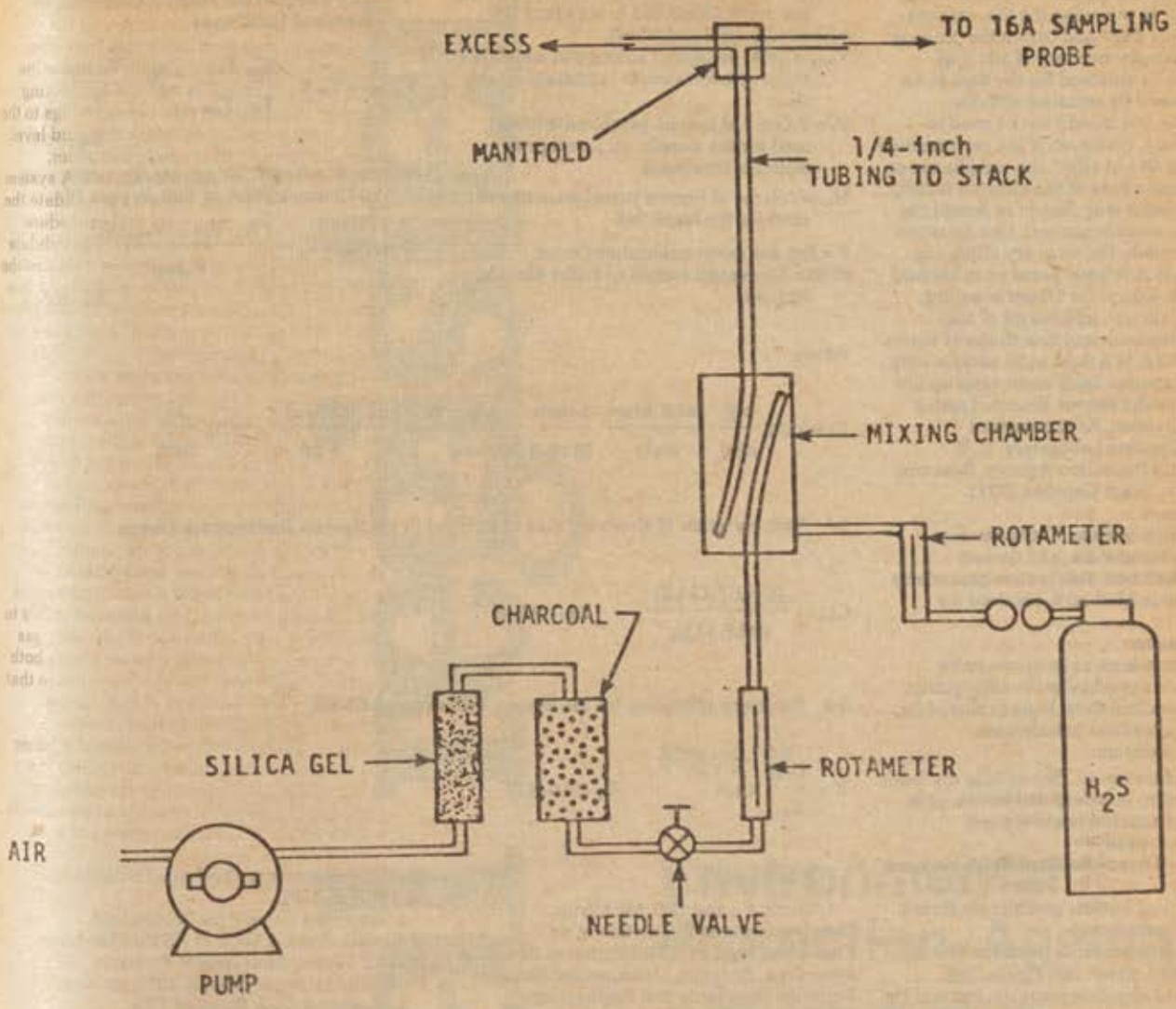

Figure 16A-3 Recovery gas dilution system

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The recovery check must be performed in the field prior to replacing the SO_2 scrubber and particulate filter and before the probe is cleaned. A sample recovery of 100 ±20 percent must be obtained for the data to be valid and should be reported with the emission data, but should not be used to correct the data. However, if the performance check results do not affect the compliance or noncompliance status of the affected facility, the Administrator may decide to accept the results of the compliance test. Use Equation 16A-4 to calculate the recovery efficiency.

4.4 Sample Analysis. Same as in Method 6, Section 4.3, except for 1-hour sampling, take a 40-ml aliquot, add 160 ml of 100 percent isopropanol, and four drops of thorin. Analyze an EPA SO_2 field audit sample with each set of samples. Such audit samples are available from the Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

5. *Calibration.*

5.1 Metering System, Thermometers, Rotameters, Barometers, and Barium Perchlorate Solution. Calibration procedures are presented in Method 6, Sections 5.1 through 5.5.

6. *Calculations.*

In the calculations, at least one extra decimal figure should be retained beyond that of the acquired data. Figures should be rounded off after final calculations.

6.1 Nomenclature.

C_{TRS} = Concentration of TRS as SO_2, dry basis corrected to standard conditions, ppm.

C_{RG} = Concentration of recovery gas generated, ppm.

C_{H_2S} = Verified concentration of H_2S recovery gas.

N = Normality of barium perchlorate titrant, milliequivalents/ml.

P_{bar} = Barometric pressure at exit orifice of the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

Q_{H_2S} = Calibrated flow rate of H_2S recovery gas, liters/min.

Q_{CG} = Calibrated flow rate of combustion gas, liters/min.

R = Recovery efficiency for the system performance check, percent.

T_m = Average dry gas meter absolute temperature, °K (°R).

T_{std} = Standard absolute temperature, 293 °K, (528 °R).

V_a = Volume of sample aliquot titrated, ml.

V_m = Dry gas volume as measured by the dry gas meter, liters (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, liters (dscf).

V_{soln} = Total volume of solution in which the sulfur dioxide sample is contained, 100 ml.

V_t = Volume of barium perchlorate titrant used for the sample, ml (average of replicate titrations).

V_{tb} = Volume of barium perchlorate titrant used for the blank, ml.

Y = Dry gas meter calibration factor.

32.03 = Equivalent weight of sulfur dioxide, mg/meq.

6.2 = Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{m(std)} = V_m Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} = K_1 Y \frac{V_m P_{bar}}{T_m}$$

Eq.-16A-1

Where: K_1 = 0.3858 °K/mm Hg for metric units.

6.3 Concentration of TRS as ppm SO_2.

$$C_{TRS(ppm)} = K_2 \frac{(V_t - V_{tb}) N (V_{soln}/V_a)}{V_{m(std)}}$$

Eq.-16A-2

Where:

$$K_2 = 32.02 \frac{\text{mg}}{\text{meq}} \frac{24.05 \text{ liters}}{\text{mole}} \frac{1 \text{ mole}}{64.06\text{-g}} \frac{1\text{-g}}{1000 \text{ mg}} \frac{1000\text{-ml}}{\text{liter}} \frac{1000\text{-}\mu\text{l}}{1 \text{ ml}} = 12025 \frac{\mu\text{l}}{\text{meq}}$$

6.4 Concentration of Recovery Gas Generated in the System Performance Check.

$$C_{RG} = \frac{(Q_{H_2S})(C_{H_2S})}{Q_{H_2S} + Q_{CG}}$$

Eq.-16A-3

6.5 Recovery Efficiency for the System Performance Check.

$$R = \frac{C_{TRS}}{C_{RG}} \times 100$$

Eq.-16A-4

7. *Bibliography.*

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federal register

Friday
March 8, 1985

Part V

Environmental Protection Agency

40 CFR Parts 305 and 306
Superfund; CERCLA Arbitration Procedures and Natural Resource Claims Procedures; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[FRL 2766-5]

Superfund; CERCLA Arbitration Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) outlines procedures for asserting a claim against the Hazardous Substance Response Trust Fund (the "Fund") established under CERCLA. A portion of these section 112 procedures concerns the arbitration of claims, the subject of this regulation. Claims are authorized by section 111 of CERCLA for two general purposes: To reimburse persons for the costs of responding to actual or threatened releases of hazardous substances, pollutants or contaminants (i.e., response claims); and to pay trustees for the costs of the assessment of damages to natural resources, and/or for the costs of restoration, rehabilitation, replacement or acquiring the equivalent of natural resources injured as a result of the release of a hazardous substance (i.e., natural resource claims). Section 112(b)(4) of CERCLA directs the President to establish a Board of Arbitrators (Board) to decide some factual disputes with regard to claims. The President has delegated this authority to the Environmental Protection Agency (EPA) under Executive Order 12316 EPA is today proposing regulations which establish and govern the procedures of the Board. The general procedures for filing natural resource and response claims will be issued separately under 40 CFR Parts 306 and 307, respectively.

DATES: Comments must be submitted on or before May 7, 1985.

ADDRESSES: Comments may be submitted in triplicate to William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Docket: The public docket for claims procedures is located in Room S-325 at the Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-4642.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), requires EPA (by delegation from the President) to prescribe the forms and procedures for asserting a claim against the Fund. This proposed regulation concerns only one portion of the section 112 procedures: Those pertaining to the Board of Arbitrators. (Section 112 (b)(3), (b)(4)). EPA proposes elsewhere in today's **Federal Register** the forms and procedures for asserting a claim for injury to, destruction, or loss of a natural resource (proposed 40 CFR Part 306). The Agency expects to propose in 40 CFR Part 307 forms and procedures for the assertion of response claims shortly. The purpose of the Board is to decide factual disputes with regard to claims in one of two circumstances: When the Administrator declines to award a claim, or when a claimant is dissatisfied with the size of an award and petitions the Board.

This preamble explains: the statutory background for asserting claims against the Fund, the selection and dismissal of Board members, referral of claims to the Board, the procedures for filing pleadings, the procedures for the arbitral hearing itself, the process by which a Board member will make a decision, the procedures for expedited decisions by members of the Board, and the regulatory status of this regulation under Executive Order 12291, the Rgulatory Flexibility Act, and the Paperwork Reduction Act of 1980.

II. Background

A. Statutory Framework

CERCLA, enacted on December 11, 1980, establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes the Hazardous Substance Response Trust Fund (the "Fund"), which may be used by the Government to respond to releases and to pay certain claims to other parties for responding to releases. CERCLA also imposes liability on classes of parties associated with sites and the disposal or treatment of hazardous substances and provides authority to undertake enforcement and abatement action against responsible parties.

Section 111(a) authorizes the use of the Fund for three general purposes: (1) Payment of governmental response costs incurred pursuant to section 104 of CERCLA, (2) payment of response claims, and (3) payment of natural resource claims. Only the latter two uses of the Fund are subject to arbitration under section 112.

Response claims, as authorized by section 111(a)(2) of CERCLA, reimburse persons other than the Federal government for the necessary costs of responding to an actual or threatened release of a hazardous substance, pollutant or contaminant. For a claimant's response costs to be reimbursed, those costs must be incurred as a result of carrying out the National Oil and Hazardous Substance Contingency Plan (NCP) (40 CFR Part 300, 47 FR 31180 *et seq.* July 16, 1982). The procedures for filing a response claim will be proposed in the near future.

Natural resource claims are authorized at section 111(a)(3) and (b) of CERCLA, and can be asserted only by trustees of the particular resource. Such trustees are defined in section 111(b) as Federal or State governmental agencies who have authority over the natural resource. Trustees can file claims for two general types of costs: (1) The costs of assessing damage to a natural resource as the result of a release of a hazardous substance, and (2) the reasonable costs for the restoration, rehabilitation, or acquiring the equivalent of an injured natural resource. The forms and procedures for filing a natural resource claim are proposed elsewhere in today's **Federal Register.**

As mentioned previously, this regulation is concerned with the portion of the procedures for asserting either a response or natural resource claim against the Fund; i.e., arbitration of factual disputes. Section 112 of CERCLA outlines the procedures for filing such a claim. In general, upon receipt of any claim, the Administrator of EPA (Administrator) must inform any known affected parties of the claim as soon as practicable; and then attempt to promote and arrange a settlement between the claimant and the potentially responsible parties (PRPs). If there are no known PRPs, the Administrator must attempt to arrange a settlement with the claimant. If a settlement can be agreed to, the Administrator is authorized to make an award from the Fund; and the parties

are deemed to have waived any further recourse.

If the Administrator cannot arrange a settlement within 45 days, he will then proceed to make a decision on whether to award or deny the claim. After the Administrator makes this decision, the claim may be forwarded to the Board or Arbitrators. A claim is generally submitted to the Board if the Administrator declines to make an award. If the claimant is dissatisfied with the amount of any award, he can decide to petition the Board for further redress.

The sections which follow describe the establishment of a Board of Arbitrators for claims under CERCLA, and the procedures which the Board, and any parties participating in arbitration, must follow.

B. Dispute Resolution for Claims by Federal Agencies

The dispute resolution process for Federal agencies which may have claims before the Fund will be the procedures outlined in Executive Order 12088. That is, the Executive Branch of the Federal Government, and not the Board of Arbitrators, will make decisions where: (1) The Administrator denies the claim as outlined in section 112(b) (3), or (2) a Federal claimant wishes to challenge the amount of an award.

III. Arbitration Rules

A. Establishment of an Arbitration Board

Section 112(b)(4) (A) of CERCLA authorizes the Administrator to establish an arbitration board to decide factual disputes in CERCLA claims. The Agency must select each Board member through utilization of the procedures of the American Arbitration Association (AAA); and no employee of either the President or a Federal agency which is delegated responsibility under CERCLA can serve as a member of the Board. Apart from these two requirements, the statute grants the Agency discretion in setting up a Board.

Membership to the Board will be determined by means of the following procedure. First, the Administrator will screen all applicants for membership. The AAA will then evaluate whether candidates selected by the Administrator meet the AAA's requirements for membership. The Administrator will then appoint Board members from the list found acceptable by the AAA.

Board members are appointed for three year terms, unless dismissed by the Administrator.

B. Submission and Consideration of Claims to Board

There are two ways in which a claim can be heard by a member of the Board. First, EPA will forward the claim to the general office of the AAA if the Administrator denies the claim. Second, if a claimant wishes to challenge the amount of an award, he can file such a challenge at the general office of the AAA.

An Arbitrator is limited to resolving factual disputes with regard to a claim. For example, an Arbitrator is not empowered to overturn an Agency decision not to preauthorize a claim under 40 CFR 300.25(d) and 306.22. Nor can an arbitrator review a decision by EPA to deny a claim based on competing priorities for the expenditure of Fund monies. (Most claims of low priority would be rejected by EPA at the preauthorization stage, but some claims, such as those for emergency restorations and natural resource damage assessment, can be filed without preauthorization.) Similarly, the Arbitrator is not empowered to decide legal issues which may arise in the course of resolving a claim. The Administrator shall, as provided by 40 CFR 305.30(b)(2), include a statement summarizing the applicable legal standards and any other legal issues pertinent to the claim. In reviewing claims, a member of the Board shall accord substantial deference to EPA decisions as reflected in the administrative record.

C. Appointment of Arbitrator for Particular Claim Dispute

Disputes will be heard by a single Arbitrator, unless the Administrator decides otherwise. The selection of that Arbitrator shall be pursuant to AAA procedures. The AAA shall first submit to EPA and each claimant an identical list of names from the standing Board. The parties will then cross off any names they object to, and indicate an order of preference for those remaining. From the returned lists, the AAA shall select an Arbitrator to resolve the particular claim dispute. If, for any reason, this process fails to select a single Arbitrator, the AAA shall have the power to appoint one from among the members of the standing Board.

An Arbitrator must be neutral and, upon selection for a particular case, shall disclose any circumstances likely to affect impartiality. Upon receipt of information from the Arbitrator or any other source concerning possible impartiality, the AAA shall communicate such information to the parties. The parties shall have seven calendar days upon receipt of such information to request disqualification of the Arbitrator; however, any determination of disqualification shall be within the sole discretion of the AAA.

Once the final selection of the Arbitrator is completed, all communications from the parties should be directed to the Arbitrator. Prior to selection of the Arbitrator, communications should be directed to the AAA.

D. Pleadings

If the arbitration is initiated due to EPA denial of a claim, the Administrator shall submit to the general offices of the AAA two copies of a written statement which includes: The reasons for the denial of the claim, any supporting documentation, and the identity of any PRPs, if known, and any written communications (or summary of oral communications) with PRPs. If the claimant initiates arbitration, he shall submit to the general office of the AAA two copies of a written statement which includes: an assertion of the matter and amount of money in dispute, the remedy sought, supporting documentation, and the identity of any PRPs, if known. In either situation, the initiating party is encouraged to request expedited process, if applicable.

The opposing party is given the opportunity to answer; however, if no answer is filed within seven calendar days of notice of pending arbitration, the claim shall be deemed to be denied.

EPA or the claimant has the opportunity to amend its claim or to file an answer before an Arbitrator is chosen. However, once a member of the Board has been appointed, no new or different claim may be submitted without the Arbitrator's consent.

E. Arbitral Hearing

Hearings before a member of the Board shall be informal, but shall also afford full and equal opportunity to all parties for the presentation of relevant material. All hearings shall be open. The claimant shall have the burden of proof; and the Arbitrator has the power to subpoena the attendance and testimony of witnesses as well as the production of books, records and other evidence pertinent to the issues presented for decision. Each party has the opportunity to be represented by counsel.

The Administrator shall determine the general location in which the arbitration is to be held, giving due consideration to requests by the claimant. It shall be the Arbitrator's responsibility to fix the time and the place of each hearing once the

general location is decided. The Arbitrator shall, no later than 14 calendar days before the date of the hearing, publish a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

There shall be a record made of each arbitration hearing. The preparation of this record is the responsibility of the Arbitrator.

The parties may, by written agreement, waive oral hearings. If this occurs, all parties shall be afforded the opportunity to examine documents filed with the Arbitrator. If there is an oral hearing, all evidence (unless by agreement of the parties) shall be given in the presence of the Arbitrator and other interested parties. This rule does not apply if a party is found in default or has waived the right to be present.

F. Arbitral Decision

The Arbitrator shall render a decision within 90 days of submission of the claim to him, unless the parties agree in writing to an extension or the Administrator extends the time limit pursuant to section 112(b)(4)(I) of CERCLA.

The decision of the Arbitrator shall be signed, and in writing. It shall contain a concise statement of the basis and rationale for the Arbitrator's determination.

G. Expedited Procedures

Unless the Administrator determines otherwise, the parties and the Arbitrator shall follow expedited procedures if the claim does not exceed $20,000. The parties can also agree to follow the expedited procedures for claims exceeding $20,000.

Under the expedited procedures, notice of the arbitration shall be by telephone and mail—as will be notice of the date, time, and place of the hearing. Notice of the hearing must be published by the Arbitrator, no later than five calendar days before the date of the hearing, in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue. In most cases, any oral hearing will be conducted in a single day. Within five days of any hearing, the Arbitrator shall render a decision, unless the parties agree otherwise. In any case, it shall never take longer than 90 days for a decision to be reached after an Arbitrator is selected.

H. Appeals Procedures

The award or decision by a member of the Board shall be binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion. No award or decision by the Arbitrator is admissable as evidence of any issue of fact or law in any proceeding brought by any other provision of CERCLA or under any other provision of law. Any prearbitral settlement reached pursuant to this regulation is admissable as evidence in any such proceeding. EPA does not consider the AAA or any Arbitrator in a proceeding under this regulation to be a necessary party in judicial proceedings relating to the arbitration. Nor do we believe that the AAA or any Arbitrator may be liable to any party for any act or omission in connection with any arbitration conducted under this regulation.

I. Ex parte Communication

EPA is considering the adopton of procedures similar to those described in 40 CFR 124.78 to govern *ex parte* communication during the arbitration process. EPA solicits comments on the advisibility and content of such procedures.

IV. Regulatory Statutes and Required Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

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

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

EPA has determined that this regulation is a non-major rule under Executive Order 12291 because it is unlikely to result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This proposal meets all requirements in the Executive Order for non-major rules.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." EPA certifies that this regulation will not have a significant impact on a substantial number of small entities, because all authorized costs and expenses attributable to the operation of the Board are payable from the Fund. Further, this regulation imposes no capital expenditures, nor any compliance requirement on any industrial sector.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501 *et. seq.*, the reporting or recordkeeping provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB and the public.

List of Subjects in 40 CFR Part 305

Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Lee M. Thomas,

Administrator.

February 28, 1985.

Part 305, Title 40 of the Code of Federal Regulations is added as set forth below.

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ARBITRATION PROCEDURES

Subpart A—General

Sec.

Subpart B—Selection and Jurisdiction

Authority: Secs. 111 and 112, Pub. L. 96-510, 94 Stat. 2767-2811 (42 U.S.C. 9601 et seq.) and E.O. 12316, secs. 7(a) and 7(e), 46 FR 42237 (August 20, 1981).

Subpart A—General

§ 305.10 Purpose.

This regulation establishes and governs procedures for the arbitration of disputes arising out of claims to the Hazardous Substance Response Trust Fund established under section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

§ 305.11 Scope and applicability.

Claims for necessary response costs incurred by any person in carrying out the National Contingency Plan and for injury to, or destruction or loss of natural resources, including costs of damage assessment, as submitted by State trustees, may be decided through the procedures established by this regulation. These rules will govern the procedures for any arbitration of claims under section 112 of CERCLA.

§ 305.12 Definitions.

Terms not defined in this section have the meaning given by section 101 of CERCLA. All time deadlines in this part are specified in calendar days. *Except when otherwise specified:*

(a) "Board of Arbitrators," or "Board" means a panel of one or more persons selected in accordance with section 112(b)(4)(A) of CERCLA and governed by the provisions in 40 CFR Part 305.

(b) "CERCLA," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

(c) "Claim," means a demand in writing for a sum certain.

(d) "Claimant," means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body who presents a claim for compensation under section 112 of CERCLA.

(e) "Damage assessment claim," means a claim for assessment costs submitted to the Fund as described in section 111(c)(2) of CERCLA.

(f) "Fund", means the Hazardous Substance Response Trust Fund established under section 221 of CERCLA.

(g) "Hazardous substance", means (1) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (3) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (4) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (5) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(h) "National Contingency Plan," or "NCP," means the National Oil and Hazardous Substances Contingency Plan (47 FR 17832, revised March 19, 1980), developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR Part 300, 47 FR 31180 *et seq.*, July 16, 1982).

(i) "Natural resources," means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government.

(j) "Party," means EPA or a claimant.

(k) "Preauthorization" means EPA's approval to submit a claim for reimbursement to the Fund.

(l) "Response action," means remove, removal, remedy, and remedial action.

(m) "Response claim" means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA.

(n) "Restoration" or "Restore", means the restoration, rehabilitation, replacement, or acquiring the equivalent of any natural resources injured, destroyed or lost as a result of a release of a hazardous substance.

(o) "Restoration claim" means a preauthorized or emergency claim for restoring, rehabilitating, replacing or acquiring the equivalent of any natural resources injured by the release of a hazardous substance.

(p) "Trustee" means any Federal natural resources management agency designated in subpart G of the NCP, and any State agency that may prosecute claims for damages under section 111(b) of CERCLA.

Subpart B—Selection and Jurisdiction

§ 305.20 Selection and dismissal of the Board of Arbitrators.

(a) Members of the Board of Arbitrators for CERCLA claims shall be appointed by the Administrator. The Arbitrator for a particular claims dispute shall be selected in accordance with § 305.31.

(b) The Administrator shall screen applicants for membership to the Board by evaluating such criteria as background in hazardous substances or administrative procedures. Those applicants selected by the Administrator will be forwarded to the American Arbitration Association (AAA) for that body to evaluate whether they meet the AAA's requirements for membership. If these requirements are met, the applicant's name will be returned to the Administrator for possible appointment to the Board.

(c)(1) Except as provided in paragraph (c)(2), members of the Board serve at the pleasure of the Administrator, who may dismiss any member for such reasons as the Administrator deems appropriate;

(2) A member may not be dismissed during the pendency of a claim before such member except for cause as provided in section 305.32.

(d) The Board shall consist of as many members as the Administrator may determine is necessary for the expeditious resolution of disputes.

(e) Appointment to the Board shall be for a three year term, unless a member

is dismissed pursuant to paragraph (c) of this section.

§ 305.21 Jurisdiction of Board of Arbitrators.

(a) In accordance with the procedures set forth in § 305.30, the Board of Arbitrators is empowered to adjudicate claims asserted against the Fund pursuant to section 111 of the Act when the Administrator has denied such claims under section 112(b)(3) of CERCLA or when the claimant has made a request for arbitration pursuant to § 305.30 of this Part.

(b) The Board of Arbitrators is authorized to award claims for the reimbursement of response costs only if such costs were:

(1) Necessary response costs incurred as result of carrying out the NCP; and

(2) reasonable and necessary to carry out the response as preauthorized by the Administrator pursuant to section 300.25 of this Part.

(c) Subject to subsection (d), the Board is authorized to award claims for:

(1) The reimbursement of costs for assessing injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance; or

(2) Costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

(d) Costs may be reimbursed under subsection (c)(2) only if such costs are:

(1) Necessary and reasonable to implement a plan developed and adopted under section 111(i) of the Act; or

(2) The costs were incurred in response to a situation requiring emergency action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(e) Except for claims for assessment of injury to natural resources, and except as provided in subsection (d)(2), the Board is not authorized to:

(1) Consider or award claims which have not been preauthorized by EPA in accordance with 40 CFR 300.25(d) and 306.25;

(2) Award a claim in excess of the amount preauthorized by EPA in accordance with 40 CFR 300.25(d) and 306.25.

(f) The Board is not authorized to review a decision by the Administrator to deny a claim based on competing priorities for the expenditure of Fund monies.

(g) The Board shall apply such legal standards as are contained in the summary of applicable legal standards and principles furnished by EPA under 40 CFR 305.30(b) or 305.40(a).

(h) In reviewing claims under this Part, the Board shall accord substantial deference to EPA decisions as reflected in the administrative record.

Subpart C—Referral of Claims and Arbitrator Selection

§ 305.30 Referral of claims.

(a) If the Administrator denies a claim under section 112 of CERCLA, he shall within five days submit the claim to the general office of the AAA. If a claimant decides to challenge an award made by the Administrator with regard to the claim, he may submit the claim to the general office of the AAA within 30 days of the date of the award.

(b) When arbitration is initiated due to EPA's denial of a claim, the Administrator shall submit to the general office of the AAA two copies of a written statement which includes:

(1) The notice of the denial of the claim, with a short explanation of the reasons for that denial;

(2) A statement of the legal standard applicable to the claim and any other applicable principles of law;

(3) Any supporting documentation which EPA deems necessary to explain the reason(s) for the denial of the claim;

(4) A request for the expedited procedures, if appropriate; and

(5) The identity of any potentially responsible parties, if known, and a copy of any written communications (or summary of oral communications) with such parties.

(c) When arbitration is initiated due to the challenge of an award by the claimant, the claimant shall submit to the general office of the AAA two copies of a written statement which includes:

(1) An assertion of the matter in dispute;

(2) The amount of money in dispute;

(3) The remedy sought;

(4) A copy of the Administrator's disposition of the claim;

(5) Any supporting documentation which the claimant deems necessary to support the claimant's position;

(6) A request for the expedited procedures, if appropriate; and

(7) The identity of any potentially responsible parties, if known.

(d) The AAA shall, within five days of receipt, give notice of the referred claims under this section to the other parties in the claims dispute. Notice is complete when a copy of the claim is placed in the mail by the AAA addressed to the last known address of a party, or its attorney, or delivered by personal service. For the purposes of service to EPA, notice will be addressed to the Administrator at 401 M Street, SW., Washington, D.C. 20460.

§ 305.31 Selection of arbitrator.

(a) After the filing of the submission asking for arbitration, the AAA shall submit simultaneously to EPA and each claimant an identical list of names of persons chosen from the Board. Each party to the dispute shall have seven days from the mailing date in which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the general office of the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the Board without the submission of any additional lists. Once the AAA makes the appointment, it shall immediately notify the parties.

(b)(1) The dispute shall be heard and determined by one Arbitrator, unless the Administrator in his discretion decides that a greater number of Arbitrators should be approved based on the complexity of the issues.

(2) When a large number of claims arise from a single incident or set of incidents, a group of claims may be submitted to a single Arbitrator if the Administrator determines that it is in the best interests of the parties.

(c) The AAA shall give notice of the selection of the Arbitrator, together with a copy of these rules, to the parties. A signed acceptance of the case by the Arbitrator shall be filed at the general office of the AAA prior to the opening of the first hearing. Upon the final selection of the Arbitrator, all communications from the parties should be directed to the Arbitrator. (See § 305.52(b) for communications prior to Arbitrator selection.

(d) Unless the Administrator determines otherwise, the expedited procedures described in § 305.50 of these rules shall apply in any case where the total claim of any party does not exceed $20,000, exclusive of interest

costs, or the parties agree to the procedures for claims exceeding $20,000.

(e) If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this section and the matter shall be reheard unless the parties shall agree otherwise.

§ 305.32 Disclosure and challenge procedures.

(a) A person appointed as an Arbitrator under § 305.31 shall within five days of service disclose to the AAA any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any potentially responsible party to which the claim may relate.

(b) Upon receipt of such information from such Arbitrator or other source, the AAA shall on the same day communicate such information to the parties and, if it deems it appropriate to do so, to the Arbitrator and others.

(c) The parties may request within seven days of service by the AAA that an Arbitrator be disqualified.

(d) The AAA shall make a determination on any request for disqualification of an Arbitrator within seven days. This determination shall be within the sole discretion of the AAA, and its decisions shall be final. Disqualification under this section is distinct from dismissal by the Administrator under § 305.20(c).

Subpart D—Hearings Before the Board of Arbitrators

§ 305.40 Filing of pleadings.

(a) EPA or the claimant may file an answering statement with the general office of the AAA no later than seven days after receipt of the notice provided under § 305.30(d). In the case of a matter referred to the Board by a claimant, EPA shall provide a statement of applicable legal standards and principles.

(b) If either party desires to make any new or different claim after the claim is submitted to arbitration, such claim shall be made in writing and filed with the general office of the AAA, and a copy thereof shall be mailed to the other party, who shall have a period of seven days from the date of such mailing within which to file an answer with the general office of the AAA. After the Arbitrator is appointed, however, no new or different claim may be submitted except with the Arbitrator's consent.

§ 305.41 Pre-hearing conference.

At the request of the parties or at the discretion of the Arbitrator, a pre-hearing conference with the Arbitrator and the parties or their counsel will be scheduled in appropriate cases to arrange for an exchange of information, including witness statements, exhibits and documents, and the stipulation of uncontested facts so as to expedite the arbitration proceedings.

§ 305.42 Arbitral hearing.

(a) The Administrator shall select the locale for the arbitral hearing, with due consideration to any requests by the claimants.

(b) The Arbitrator shall fix the time and place for each hearing, within the locale selected in accordance with paragraph (a). The hearing shall commence no later than 60 days after the selection of the Arbitrator. The Arbitrator shall mail to each party notice thereof at least 30 days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof. The Arbitrator shall publish, no later than 14 days before the date of the hearing, a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

(c) Any party may be represented by counsel. A party intended to be so represented shall notify the other party and the Arbitrator of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

(d) The Arbitrator shall make the necessary arrangements for the taking of a true and accurate record for all arbitral hearings.

(e) The Arbitrator shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, and the requesting party(ies) shall assume the cost of such service.

(f) The Arbitrator may take adjournment upon the request of a party or upon the Arbitrator's own initiative and shall take such adjournment when all of the parties agree thereto.

(g) The Arbitrator shall take oaths of all witnesses before they testify at the arbitral hearing.

(h) (1) A hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

(2) The claimant shall then present its claim and proofs and its witnesses (if any), who shall submit to questions or other cross-examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

(3) Exhibits, when offered by either party, may be received in evidence by the Arbitrator. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

(i) The arbitration may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as the Arbitrator may require for the making of an award.

(j) *Evidence.* (1) The parties may offer such evidence as they desire (subject to such reasonable limitations as the Arbitrator deems appropriate) and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute.

(2) All evidence shall be taken in the presence of the Arbitrator and of all the parties, except where any of the parties is absent in default or has waived the right to be present. In any arbitration proceeding, the claimant has the burden of proof.

(3)(i) Arbitrators may subpoena the attendence and testimony of witnesses and the production of books, records, and other evidence pertinent to the issues presented to him for decision.

(ii) Subpoenas issued under this section shall be issued and enforced in accordance with 5 U.S.C. 555(d).

(iii) If a person fails or refuses to obey a subpoena, the Arbitrator may request that the Administrator request that the Attorney General invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(iv) The Administrator shall, within five days of a request under paragraph (j)(3)(iii), either:

(A) Request that the Attorney General invoke the aid of the district court as provided in paragraph (j)(3)(iii); or

(B) Advise the Arbitrator in writing that a request for invocation of judicial aid will not be made.

(k) The Arbitrator may receive and consider the evidence of witnesses by affidavit, interrogatory or deposition, but shall give it only such weight as the Arbitrator deems appropriate after consideration of any objections made to its admission.

(l) Whenever the Arbitrator deems an inspection or investigation to be necessary, the Arbitrator may request the EPA Administrator to undertake such activities pursuant to CERCLA section 104(b). The Administrator shall have sole discretion whether to grant the Arbitrator's request. In making such a determination, the Administrator shall consider the cost of the inspections or investigations, the time they will take, the reasonableness of the particular activity requested, competing demands on Agency resources, and the availability of the technical and financial capacity to conduct the requested studies, monitoring and investigations.

(m) After the presentation of all evidence, the Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed as provided for in paragraph (o) of this section and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the Arbitrator is required to make the award shall commence to run upon the referral of the claim to the Arbitrator.

(n) The parties may provide, by written agreement, for the waiver of oral hearings.

(o) All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the Arbitrator. All parties shall be afforded an opportunity to examine such documents.

§ 305.43 Arbitral decision.

(a) The Arbitrator shall render a decision within 90 days of submission of the claim to the member of the Board, except if:

(1) All parties agree in writing to an extension, or

(2) The Administrator extends the time limit pursuant to section 112(b)(4)(I) of CERCLA.

(b) The decision of the Arbitrator shall be signed and in writing. It shall contain a full statement of the basis and rationale for the Arbitrator's determination.

(c) If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

(d) Parties shall accept as legal delivery of the decision, the placing of a true copy of the decision in the mail by the Arbitrator, addressed to the parties' last known addresses or their attorneys, or by personal service.

(e) The Arbitrator shall, upon written request of a party, furnish to such party, certified facsimiles of any papers in the Arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

Subpart E—Expedited Procedures and Other Provisions

§ 305.50 Expedited procedures.

(a) Unless the Administrator determines otherwise, the expedited procedures of these rules shall be applied in any case where the total claim of any party does not exceed $20,000, exclusive of interest costs. The parties may also agree to these expedited procedures for claims exceeding $20,000. The Administrator can make a determination not to use the expedited procedures either on his own initiative or upon petition by a party. The Administrator must notify the AAA of any decision not to use the expedited procedures. The AAA must notify all parties in writing within five days of the Administrator's decision.

(b)(1) The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties.

(2) Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice of obligation has, in fact, been given by telephone.

(c) The AAA shall submit simultaneously to each party to the dispute an identical list of five members of the CERCLA Board of Arbitrators from which one Arbitrator shall be appointed. Each party shall have the right to strike two names from the list on a preemptory basis. The list is returnable to the general office of the AAA within 10 days from the date of mailing. If for any reasons the appointment cannot be made from the list, the AAA shall have the authority to make the appointment from among other members of the Board without the submission of additional lists. Such appointment shall be subject to disqualification for the reasons specified in § 305.32. The parties shall be given notice by telephone, within seven days of any objections to the Arbitrators appointed. Any objection by a party to such Arbitrator shall be confirmed in writing to the general office of the AAA with a copy to the other party(ies). Upon the final selection of the Arbitrator, all communications from the parties should be directed to the Arbitrator.

(d) The Administrator shall select the locale for the arbitral hearing.

(e) The Arbitrator shall fix the date, time and place of the hearing. The hearing shall commence no later than 60 days after the selection of the Arbitrator. The Arbitrator shall notify the parties by telephone seven days in advance of the hearing date. Formal notice of the hearing will be sent by the Arbitrator to the parties, unless the parties by mutual agreement waive such notice or modify the terms thereof.

(f) The Arbitrator shall publish, no later than five days before the date of the hearing, a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

(g) In most instances, the hearing shall be completed within one day. The Arbitrator, for good cause shown, may schedule an additional hearing to be held within five days.

(h) Unless otherwise agreed to by the parties, the decision shall be rendered not later than five business days from the date of the closing of the hearing. In no event shall the decision be rendered more than 90 days from the date of selection of the Arbitrator.

§ 305.51 Appeals procedures.

(a) The award or decision of a member of the Board shall be binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion.

(b) No award or decision shall be admissable as evidence of any issue of fact or law in any proceeding brought under any other provision of CERCLA or under any other provision of law. Nor shall any prearbitral settlement be admissable as evidence in any such proceeding.

§ 305.52 Miscellaneous provisions.

(a) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

(b) Until the Arbitrator is selected, all oral or written communications from the parties for the Arbitrator's consideration shall be directed to the AAA for eventual transmittal to the Arbitrator.

(c) All papers connected with the arbitration shall be served on the opposing party either by personal service or United States mail, First Class.

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40 CFR Part 306

[SWH-FRL 1906-4]

Superfund; CERCLA Natural Resource Claims Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) allows the submission of claims to the Hazardous Substance Response Trust Fund (the "Fund") established under CERCLA. Section 111 permits trustees to assert claims for the costs of restoring, rehabilitating, replacing or acquiring the equivalent of natural resources injured by releases of hazardous substances, including damage assessments. Claims may also be asserted for reimbursement of the costs of responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. Section 112 of CERCLA directs the President to establish forms and procedures for the filing of claims against the Fund. The President has delegated this authority to the Environmental Protection Agency (EPA) under Executive Order 12316. EPA is today proposing regulations to establish the procedures for filing, evaluating, and resolving claims for injury to natural resources asserted against the Fund. The procedures contained herein apply only to natural resource claims against the Fund. The procedures governing the Board of Arbitrators, established under section 112(b)(4)(A) of CERCLA, are proposed elsewhere in today's **Federal Register** (proposed 40 CFR Part 305). The procedures for filing claims for necessary response costs incurred by third parties in carrying out the National Contingency Plan will be issued separately under 40 CFR Part 307.

DATES: Comments must be submitted on or before May 7, 1985. As the court in *New Jersey* v. *Ruckelshaus*, Civ. Action No. 84-1668 (D.N.J., Dec. 12, 1984), has ordered EPA to promulgate these regulations by November 30, 1985, the Agency will be unable to consider requests for an extension of the comment period.

ADDRESSES: Comments on the proposed regulation and forms may be submitted in triplicate to William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Docket: The public docket for claims procedures is located in Room S-325 at the Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, and is available for reviewing from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-4642.

SUPPLEMENTARY INFORMATION:

I. Introduction

This proposed regulation would provide the forms and procedures authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, (CERCLA or the Act), for filing claims allowed by section 111 of the Act for injury to, or destruction or loss of natural resources. This proposed regulation would apply only to claims for reimbursement from the Hazardous Substance Response Trust Fund established by section 221 of CERCLA (the Fund), and not to judicial actions under section 107 of CERCLA. The regulation would apply only to natural resource claims under section 111 (a)(3) and (b)—claims by trustees for injury to, or destruction or loss of (hereinafter, collectively referred to as "injury to") natural resources, including the cost for damage assessments. This regulation would not apply to claims against the Post Closure Liability Fund established under section 232 of CERCLA; procedures for such claims will be addressed at a later date.

This preamble explains: The background of CERCLA, the types of claims for natural resource injury authorized by CERCLA, the distinction between response actions and natural resource activities, the Agency's priorities for natural resource claims in relation to the limited resources available in the Superfund, the annual planning and budget process through which EPA will make trustees aware of Fund priorities for natural resource claims, the requirement that claims for injury to natural resources be preauthorized by EPA, the process by which EPA will review and evaluate claims, what trustees should do in emergency situations, the statutory time limits within which natural resource actions must be undertaken by trustees in order to avail themselves of the natural resource claims provisions of CERCLA, and the regulatory status of this regulation under Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1980.

II. Background

CERCLA provides several options for responding to releases of hazardous substances, pollutants, or contaminants. This section describes briefly the framework of the statute, as it applies to this regulation, and the types of claims compensable under CERCLA.

A. Statutory Framework

CERCLA, enacted on December 11, 1980, establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes a Fund which may be used to respond to releases and to pay certain claims to other parties for responding to releases. CERCLA also imposes liability on those responsible for actual or threatened releases and provides authority to undertake abatement actions and to enforce against responsible parties.

CERCLA authorizes certain responses to releases or threats of releases of hazardous substances, pollutants or contaminants from vessels and facilities. "Hazardous substance" is defined by section 101(14) of CERCLA, and "pollutant or contaminant" is defined by section 104(a)(2) of CERCLA. The Government may take response actions whenever there is a release or a substantial threat of a release of a hazardous substance, or whenever there is a release or substantial threat of a release of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare or the environment. (Hereinafter, unless otherwise indicated, the term "release" refers to actual or threatened releases of either hazardous

substances or pollutants or contaminants). These response authorities may be utilized unless the President (by delegation, EPA) determines that a response action will be done properly by a responsible party (section 104). Any response actions taken by the Government, pursuant to this authority, must not be inconsistent with the National Oil and Hazardous Substance Contingency Plan (NCP) (40 CFR Part 300, 47 FR 31180 *et seq.* July 16, 1982).

The first major response action authorized by section 104(a) of CERCLA is a removal. In a removal action EPA can respond to immediate and significant threats to public health or welfare or the environment posed by a release or threat of a release of hazardous substances, pollutants or contaminants into the environment. Removal actions generally are limited to not more than six months in duration and the expenditure of not more than $1 million. One hundred percent of the cost of these removal actions may be paid out of the Superfund.

The second major response action available under section 104(a) of CERCLA is a remedial action. Remedial actions are responses to prevent or mitigate the migration of hazardous substances, pollutants or contaminants from the site in order to protect health, welfare and the environment. Under the NCP, CERCLA funded remedial actions must be cost-effective and are restricted to sites that are on the National Priorities List (NPL). Remedial actions may take several years to plan, design, and implement. There is no statutory limitation on the amount of time or money that can be spent for a remedial action; however, EPA is required to balance the costs of the remedial action selected against other demands on the Fund in determining whether and how to proceed with the remedial action. States are required by statute to contribute ten percent of the cost of the remedial action selected (or at least fifty percent of all response costs at the site if that site is owned or operated by the State or political subdivision).

Section 104(b) authorizes studies, investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, extent, source, and nature of an actual or threatened release, and the extent of danger to the public health or welfare or the environment. Under this broad authority, EPA may authorize Fund expenditures for studies and investigations of injury to natural resources, to the extent that such injury may pose a threat to public health, welfare, or the environment. For example, a contaminated wetland could be addressed through a section 104 response action.

Section 106 of CERCLA authorizes Federal enforcement actions, including administrative orders, to abate the effects of releases. Section 107 imposes broad liability for releases on current and former owners and operators of vessels or facilities, as well as on persons, such as generators and transporters of hazardous waste, who arranged for the disposal or treatment of hazardous substances. Section 107 also confers a right of action upon the United States and States as trustees to sue for injury to natural resources. Under the Act, the measure of such damages may not be limited by the sums which can be used to restore or replace such resources, and could under section 107 include, for example, loss of use and/or aesthetic value. Any sums recovered by trustees must be available for use to restore, rehabilitate, replace, or acquire the equivalent of such natural resources.

Section 111 of CERCLA authorizes the submission of claims from the Fund for injury to, or destruction or loss of, natural resources, including the cost of damage assessment, as a result of a release of a hazardous substance. The Federal Government or States, as trustees, may submit claims against the Fund for reasonable costs associated with assessing damage to natural resources and for restoring, rehabilitating, replacing or acquiring the equivalent of injured natural resources. (Hereinafter, unless otherwise indicated, the term "restoring" or "restoration" includes restoring, rehabilitating, replacing or acquiring the equivalent of.) Unlike a section 107 suit, the measure of damages recoverable from the Fund is limited to reimbursement of restoration costs and the costs of assessing damages to the resource. Section 111 also authorizes the payment of claims for response costs incurred by non-governmental entities in carrying out the NCP.

Section 112 of the Act sets forth procedures by which claims may be asserted against the Fund. That section also requires the President, and by Executive Order the Agency, to establish forms and procedures for both natural resource and response claims.

B. Natural Resource Claims Allowable Under CERCLA

1. *Definition of Trustee.* Natural resource claims may be asserted against the Fund only by the trustee for the natural resource. For the purpose of claims, CERCLA section 111(b) designates the President as trustees for resources over which the United States has sovereign rights and certain additional resources identified in section 111(b) (hereinafter referred to as "Federal resources"), and States as trustee for resources within their boundaries, belonging to, managed by, controlled by, or appertaining to the State. Subpart G of the NCP specifies which Federal agency(ies) shall serve as trustee(s) for the various Federal resources. It also describes the relationship between Federal and State trustees.

2. *Uses of the Fund for Natural Resources.* Section 111(b) provides that trustees may make natural resources claims for "* * * injury to, or destruction or loss of, natural resources, including the cost for damage assessment "* * *." Section 111(c)(2) declares that Fund money may be used for "* * *" the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resource injured, destroyed, or lost * * *." Accordingly, claims will be allowed only for the costs of restoration, rehabilitation, or replacement or acquiring the equivalent of an injured natural resource. (This proposed rule will use the term "restoration costs" to refer to all of these costs.) The Agency does not believe that the limited resources in the Fund should be used to provide monetary compensation for loss or injury to natural resources. By contrast, as noted above, section 107 does not limit sums which can be recovered against responsible parties to restoration costs (section 107(f)).

3. *Types of Natural Resource Claims.* CERCLA permits trustees to obtain compensation through the claims process for two types of natural resource activities—damage assessment and restoration. Damage assessment is the process of determining the extent of injury to, destruction or loss of a natural resource. (Hereinafter, the term "injury" refers to injury to, destruction or loss.) This may include preliminary investigation of injury, and the use of appropriate techniques for determining the extent of injury. Trustees may also include in such claims the reasonable and necessary costs associated with developing cost projections and an appropriate restoration plan and with the obtaining of public comments.

The Act provides that restoration may involve restoring, rehabilitating, replacing or acquiring the equivalent of an injured resource. Examples of restoration activities include: Cleanup to make an injured area habitable once again to indigenous fish and wildlife,

contouring land to its original topography, and restocking and revegetating land. Other types of activities contemplated by CERCLA to mitigate losses to natural resources include replacement of the natural resource that has been injured, lost or destroyed with an equivalent resource, preferably in the same general geographical area as the lost resource. An example of this would be the restocking of an injured or destroyed fish population with new fishstocks.

CERCLA also authorizes acquiring the equivalent of an injured natural resource. An instance of this would be creating an equivalent wetland or rehabilitating a functionally-stressed wetland ecosystem, preferably in the same geographical area, for one injured by the release of a hazardous substance. It may also include development of a new habitat from another potentially equivalent wetland. The result of either approach would be to ensure that the overall sum of wetlands available for the purpose(s) for which they were used at the time of the release is maintained.

Section 111(i) bars the use of Fund monies for natural resource restoration, except in limited situations, until a plan for the use of such monies has been developed by the trustee and adopted by affected Federal agencies and States. The Agency interprets this section to require "preauthorization" or the prior approval of EPA before natural resource claims for restorations may be asserted against the Fund. "Preauthorization" is discussed further in section III of this preamble.

III. Use of the Fund for Natural Resource Claims

This section explains the priorities which the Agency will use to approve requests for natural resource expenditures from the Trust Fund. It also explains why the annual EPA budget process is necessary for evaluating requests for funding of damage assessments and restorations and why the Agency prefers to address injury to natural resources, when possible, through its response authorities. It then explains the preauthorization process for restorations.

A. Agency Priorities for Use of the Fund

There are many sites around the country where the release or threatened release of a hazardous substance poses a threat to public health. The Agency believes that response at those sites has a higher priority on the Fund's limited resources than does injury to natural resources.

Section 111(e)(2) of the Act, which allows the Agency to spend no more than 15 percent of the amount credited to the Fund each year on natural resource claims, makes it clear that such a priority is consistent with Congressional intent. Accordingly, at least while many sites that appear to pose human health risks remain unattended, the majority of resources available in the Superfund will be utilized to support response ("removal" and "remedial") actions. Because of this, it is unlikely that the Agency will allocate the maximum 15 percent of the amount credited to the Fund to natural resource claims in the next few years.

B. Coordination of Response and Natural Resource Action

In keeping with its emphasis on Fund-financed response actions, the Agency intends, where possible, to address injury to natural resources within the context of those actions. The reason for linking natural resource activities with response activities at a given site is simple. Many of the removal and remedial actions selected by EPA will directly or indirectly address losses to natural resources that have occurred at the site as a result of the release of hazardous substances into the environment. For example, the decontamination of ground water involves both actual or potential injury to public health (requiring a remedial action) and danger to a natural resource (requiring a restoration). In some cases, the removal or remedial action selected to protect the public health will essentially restore the area to its natural condition. For example, natural resources such as fish or wildlife that were unable to inhibit the area as a result of the releases of hazardous substances will be able to reinhabit the area once the threat is corrected or minimized. On the other hand, removal or remedial actions generally will exclude specifically directed restoration activities, such as the restocking of fish in surface streams or lakes.

A first step toward completing a remedial action under section 104 of CERCLA is the preparation of a remedial investigation/feasibility study ("RI/FS"). In preparing the RI/FS, the Agency will evaluate actual or potential injury to natural resources to the extent that such injury is associated with a threat to human health or welfare, or to the environment. Similarly, the response cleanup action may address injury to natural resources. EPA has linked the planning, budgeting and implementation of natural resource activities with the response program. Trustees of natural resources should therefore become actively involved in the review of response actions planned at sites where the release of a hazardous substance may have injured a natural resource. EPA will, to the extent practicable, notify affected trustees of suspected natural resource injury as provided by § 300.52(d) of the NCP. Involvement at an early stage will allow trustees to identify activities which are not contained in a proposed remedial or removal response action. Trustees may then request that the scope of planned response actions (including RI/FS) be expanded to address major natural resource concerns. If the Agency determines that the response action cannot be so expanded, trustees may follow the procedures necessary to assert a claim against the Fund.

The trustee is cautioned that his actions at the site should neither interfere with, nor disrupt, response actions planned or underway at the site, if known. In determining if an emergency restoration should be undertaken, the trustee should consult the National Response Center, the Regional Response Team, the on-scene coordinator, and other Federal, State or private parties at the site. Where the response can include efforts to address injury to a natural resource, trustees should propose such actions. The Agency will only reimburse for emergency actions which either could not have been addressed in the response action or were specifically considered but not included in the response action. Trustees may present claims for emergency actions to the Fund only after presentation of the claim for emergency action to the potentially responsible party.

The priorities that must be addressed by EPA in utilizing the Fund make it unlikely that many natural resource claims will be awarded in the near future. Accordingly, trustees are encouraged to obtain relief regarding natural resources injured by suing responsible parties. The priorities which the Agency will accord to natural resource claims are discussed next.

C. Priorities for Natural Resource Claims

In evaluating natural resource claims, the Agency will give top priority to those sites where imminent and substantial endangerment to public health or the environment warrant an immediate removal or enforcement action. These sites may or may not be on the National Prioroties List (NPL). Conditions at many of these sites, in addition to posing serious actual or potential threats to public health, could also cause

significant injury to natural resources. Where the efforts to stabilize a situation can, with substantial benefit, be augmented by a specific natural resource assessment or restoration activity, the trustee may notify the Agency of its intent to file an assessment claim or request preauthorization of the restoration. EPA will consider requests solely for a restoration only if trustee can justify such actions without an assessment. Where the site is on the NPL, the Agency will take into consideration the likelihood of a remedial action (beyond the removal action) and its potential scope in making this decision. In some cases, a seemingly desirable restoration proposal may be deferred pending future site decisions on remedial actions. Where the site is not on the NPL, and has little likelihood of being included, the Agency will make its decisions based on the priority, costs and benefits of the specific restoration proposed.

The Agency will accord second highest priority for natural resource claims at sites where the Agency has instituted or intends to institute Fund-financed remedial or enforcement actions. To be eligible for a remedial action, a site must be on the NPL. 40 CFR Part 300 (Appendix B). As discussed above, the Agency, where possible, will attempt to develop these remedial actions in a manner that addresses the injury to natural resources. At sites on the NPL for which remedial action is planned or underway, but for which natural resources will not be *completely* addressed, trustees should first request that the remedial plan be expanded to address the natural resource injury. If such expansion is not possible, the trustee may proceed against the Fund. In the case of a restoration claim, the trustee must obtain preauthorization from the Agency. No preauthorization is required for a damage assessment claim. However, in either case, the trustee is advised to notify the Agency of his intent to file a claim. Preauthorization of restoration claims and decisions on assessment claims will be made in part on a priority basis; an annual planning process is essential to sound decision-making.

Recognizing that sufficient resources may not be available from the Fund to implement a restoration plan once developed, trustees are encouraged to pursue actions against responsible parties to obtain restoration of natural resources injured as a result of the release of a hazardous substance. The Agency is most likely to preauthorize a specific restoration action when prospects for recovery from a responsible party appear limited, and the Fund-financed remedial action does not address a substantial natural resource injury.

The third priority for natural resource claims will be given to injuries that are not at NPL sites but result from releases associated with NPL sites. Restorations that fall into this category may require an areawide cleanup and are likely to be greater than priority two restorations in terms of scope and cost.

Finally, the last priority relates to those sites that are not on the NPL and which do not pose an immediate and significant threat to public health requiring the exercise of the removal authorities under CERCLA. The Agency is unlikely to allow natural resource claims for these sites unless a natural resource of unusual significance is endangered or threatened.

The Agency will evaluate claims for damage assessments and requests for preauthorization of restoration claims according to the above criteria. In evaluating these claims and requests, the Agency will also consider:

(1) The seriousness of the problem in relation to competing demands on the Fund;

(2) The uniqueness or special significance of the affected natural resource as indicated by the trustee;

(3) The extent to which the injury has been or may be addressed by a response action;

(4) The liability of the claimant for the release or threatened release.

D. Preauthorization of Claims for Natural Resource Restoration

This proposal provides that claims for natural resource restoration may be submitted to the Fund only if they are approved in advance or "preauthorized" by the EPA. EPA interprets CERCLA to require that a plan for the restoration of natural resources must be adopted before a claim for restoration costs may be submitted to the Fund. Section 112 of CERCLA, which sets forth the procedures whereby claims may be asserted against the Fund, applies only to "all claims which may be asserted against the Fund pursuant to section 111 of this title." Thus, in order for a claim to be filed, triggering all the procedures of section 112, the claim must satisfy the prerequisites of section 111. Among those prerequisites is section 111(i), which provides:

> Funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds has been developed and adopted * * *.

While the statute does not specify when this plan must be adopted, there are several reasons to believe that it must be before a claim is filed. First, a claim is defined by section 101(4) as a "demand in writing for sum certain." Since the section 111(i) plan is essential for determining the nature and extent of the natural resources restoration, it is difficult to see how any meaningful "sum certain" could be identified before adoption of the plan. Furthermore, section 112(b)(3) of CERCLA provides that if no settlement is reached within 45 days of the filing of the claim, the President [EPA] may make and pay an award. If EPA declines to make an award, the matter is referred to the Board of Arbitrators. While section 112(b)(3) does not specifically *require* that an award be made within 45 days, it does *contemplate* that an award might be made within that time frame. The statute certainly does not contemplate the post-claim development of a section 111(i) plan, which requires "adequate public notice and opportunity for hearing and consideration of all public comments," a process which would take considerably longer than 45 days.

As noted previously, section 112(b) provides for the referral of denied claims to a member of the Board of Arbitrators, whose decision may be disturbed only for "arbitrary and capricious abuse of discretion." There is no indication in the statute or its legislative history, however, that the Board should have authority to make policy judgments on the priority of claims. Nor does the traditional role of arbitrators suggest such a result. An arbitrator would be ill-equipped to make such a policy judgment, since he would not be aware of or fully appreciate the press of other matters which are competing for the Fund's attention. It is worth noting in this regard that although Congress imposed a 15% *maximum* on amounts that could be spent on natural resource claims, there is no minimum. Indeed, the Agency could reasonably determine that no money at all should be spent on natural resource claims pending further progress in cleaning up NPL sites. Given these priorities, which are consistent with Congressional intent, it would make little sense for claims which EPA has determined to be of insufficient priority to be subject to an award by the Board of Arbitrators. There is no suggestion in the statute or its legislative history that the Board was to have the effective authority to allocate up to 15% of the Fund. Rather, the section 112 claims process makes most sense if it addresses only those claims which the Agency has

determined are of sufficient importance to merit Fund expenditure. The Agency believes that Congress has intended this result by requiring the adoption of a section 111(i) plan before the filing of a claim under section 112.

EPA recognizes that the court in *New Jersey v. Ruckelshaus*, Civ. Action No. 1668 (JWB) (D.N.J., Dec. 12, 1984), rejected the Agency's interpretation that preauthorization of natural resource claims is required by the Act. The Federal Government is now in the process of deciding whether to appeal the *New Jersey* order. Of course, pending a reversal or stay, the Agency will process the claims that are the subject of the order. However, even if the *New Jersey* court's opinion that the statute does not require preauthorization prevails, the Agency believes that the Act provides EPA with the discretion to impose the preauthorization requirement by regulation, as part of its responsibilities to manage the Fund and otherwise implement the Act. For this reason, EPA does not believe this proposed regulation to be inconsistent with the court order. In any event, the regulation would not apply to any purported claims, such as those that were the subject of the *New Jersey* litigation, which have already been submitted to the Fund. These claims will be handled on a case-by-case basis. To the extent that a further judicial order precludes the promulgation of the preauthorization requirement, the Agency would consider incorporating into other portions of the regulation alternative mechanisms which would allow the Agency to ensure that no awards are made for natural resource injuries that would be inconsistent with the Fund priorities which the Agency otherwise establishes. Commenters are requested to discuss the merits of such an alternative approach.

EPA believes that the preauthorization requirement is a legitimate and important part of the procedures being proposed today. First, the Agency must harmonize the requirements of section 111(i) with the procedures for submitting a claim. We believe that adoption of the section 111(i) plan *before* submitting a claim is most appropriate, in that the claims process could then focus on only those claims for which there is a reasoned basis and which the Agency has determined to be of sufficient priority. This is in accordance with the Congressional directive to spend Fund monies in a cost-effective manner. As stated by the Senate Committee Report on S. 1480: "[A]ction to restore, rehabilitate, or replace natural resources under the provisions of this Act [should] be accomplished in the most cost-effective manner possible. The process of developing such a plan will be of great assistance in avoiding unnecessary costs" (S. Rep. No. 96–848, 96th Cong., 2d Sess., p. 85 (1980)).

The primary function of the preauthorization is to allow EPA to evaluate the merits of a proposed restoration and determine whether it is of sufficient priority for Fund reimbursement. Preauthorization will be EPA's commitment to make an award to reimburse necessary and reasonable restoration costs. A maximum reimbursement may be specified at the time of the preauthorization. Preauthorization thus will provide assurance to the trustee that funds will be available, although ultimate reimbursement will depend on amounts actually available in the Fund. In addition, the preauthorization requirement will prevent the submission of large claims to the Fund which, under section 111(e) of CERCLA, must be paid in the order in which they are finally determined. By allowing the filing only of high priority claims, the Agency will ensure that one trustee does not obtain exclusive use of the Fund.

Preauthorization also serves another important function. Under section 112(a), trustees must elect whether to file a lawsuit against a responsible party or submit a claim to the Fund. Since a request for preauthorization does not constitute the filing of a claim, denial of preauthorization will preserve the trustee's right to proceed against the responsible parties. No election is made until a claim or lawsuit is actually filed.

Consistent with the priorities discussed above EPA will consider preauthorizing natural resource claims for restoration activities. With limited funds available for response actions, as well as damage assessments and restorations, trustees are encouraged to recover the costs of restoration activities from responsible parties, whenever possible, using the information in the damage assessment to support these cost recovery actions. The process by which EPA will consider both assessment claims and requests for preauthorization of restoration claims is described in IV.

E. EPA's Planning and Budgeting Process

Under its Fund management authority, EPA has established an annual planning and budgeting process to determine funding priorities for natural resource damage assessment and restoration claims. The priorities discussed above will be used by EPA to coordinate its response activities under section 104 with section 111 natural resources claims. This process is designed to ensure that Fund monies are used to address those sites which pose the greatest threat to public health and welfare and the environment. The planning for a fiscal year of funding will begin during March, some eighteen months prior to the start of that fiscal year (e.g., planning will start in March 1985 for the 1987 fiscal year which starts October 1, 1986).

The Agency encourages, but does not require, trustees to file a notice of intention to file a claim before filing an assessment claim or a request for preauthorization of a restoration. Each Federal and State trustee is requested to furnish EPA with the following information by April 1 of each year: (1) The trustee's objectives for natural resources, consistent with the priorities above, (2) the estimated costs of and schedule for such actions, (3) alternatives to funding (i.e., potential for action against a responsible party), and (4) the date of discovery of the loss. The Agency will assemble all submissions, review the sites for consistency and scheduling sequence with response activities, and establish a national ranking of priorities within a range of possible funding levels (i.e., anticipated appropriation levels).

If EPA's preliminary ranking of a trustee's notice of claim is low (due to an insufficient balance in the Fund or the low priority assigned to the site when weighed against other sites or alternative uses of the Fund) the trustee may modify the anticipated claim amount or the proposed schedule or resubmit the request in its original form in a following fiscal year.

The trustee's annual submission may request, and the EPA appropriation may allow, all or any portion of the proposed restoration activities. The Agency will impose, through the preauthorization process, a limit on the sums which may be recovered from the Fund for all sites for which an appropriation is available.

After the trustee's review of and comment on the Agency's preliminary annual priorities, the Agency will submit a proposed budget to the Office of Management and Budget. The budgeting will then follow the traditional Federal budget process.

There are two principal benefits to the trustee for participating in the planning process: (1) The Agency can better attempt to address conditions at the site in concert with response activities, and (2) the trustee will have some assurance

as to which natural resource activities may be reimbursed through the Fund.

IV. Procedures for Pursuing Natural Resource Claims Against the Fund

A. Trustee and Lead Trustee Responsibilities

In case where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent jurisdiction, such trustees shall coordinate and cooperate in carrying out their responsibilities. For example, if one trustee has responsibility for a species which inhabits land or water under the protection or control of another trustee, those trustees shall coordinate their planning and any subsequent actions. If the injury or any subsequent remedy is realistically divisible (e.g., contamination of ground water and aquatic life from the same release), the trustees may act independently and pursue separate requests for funding or preauthorization. Conversely, where there are multiple trustees and the resources are not realistically divisible, the trustees must coordinate their actions and submit a single request to EPA. The Agency proposes in this regulation a set of procedures for claims against the Fund in the event that multiple trustees are affected by the same release of a hazardous substance and desire to seek recourse against the Fund. Under this proposal, trustees must: (1) Notify other potential trustees of their plan to pursue a claim against the Fund, (2) select a single trustee to act as "lead trustee" for purposes of administering the claim, and (3) coordinate among themselves so that they file a request which respects all trustees' interests.

The basic for requiring a "lead trustee" for claims against the Fund is to facilitate processing of annual requests, the claim, and any requests for supplementary information. The lead trustee will act as the central contact for Agency communications regarding the claim and should be selected by the multiple trustees affected by the release. Should the trustees fail to agree on a lead trustee, EPA will designate, at its discretion, a trustee to serve as lead trustee for the purposes of claims against the Fund. (Hereinafter, the term "trustee" also means "lead trustee", where applicable.)

B. Approaches to Natural Resource Damage Assessment

Guidelines for conducting both simplified and alternative protocol damage assessments mandated under section 301(c)(2) are scheduled for proposal by the Department of Interior in April 1986 and December 1985, respectively. The Act sets forth two basic types of damage assessments: (1) *Simplified damage assessments*, specified in section 301(c)(2)(A), require minimal field observations and include establishing measures of damages based upon units of discharge or release, or units of affected area. Such assessments should be straightforward and inexpensive to conduct and take relatively little time. (2) *Alternctive protocol damage assessments*, specified in section 301(c)(2)(B), require a determination of the type and extent of short- and long-term injury to natural resources. Such assessments shall utilize the best available procedures to determine damages, including both direct and indirect injury, destruction, or loss, and take into consideration factors including replacement value, use value, and the ability of the ecosystem or resource to recover. When trustees intend to submit a restoration claim to the Fund, a detailed restoration plan must also be prepared. A claim for assessment costs may include the costs of preparing the restoration plan.

The best time to undertake a damage assessment will depend on the particular situation at the site. In some circumstances, it may be before or during a remedial investigation; while, in others, it may not be until after the feasibility study, or even construction, has been completed. The trustee must carefully weigh the issue of the statute of limitations since discovery of the loss of the natural resource may occur during the remedial phase. Under today's proposal, the filing of a damage assessment claim would satisfy the statute of limitations for a future restoration claim against the Fund.

C. Rebuttable Presumption for Assessments

Section 111(h)(1) provides that in accordance with regulations to be promulgated under section 301(c) of CERCLA, injury to natural resources resulting from releases of hazardous substances shall be assessed by designated Federal officials. Section 111(h)(2) provides that an assessment of injury to, destruction, or loss of natural resources shall have the effect of a rebuttable presumption on behalf of a claimant in any proceeding under CERCLA or section 311 of the Federal Water Pollution Control Act.

As noted in the proposed revision to the NCP (50 FR 5862 *et seq.* February 12, 1985), the Agency is considering whether to adopt one of three possible approaches for resolving the issue of whether and under what circumstances assessments of injury to natural resources conducted by State trustees are entitled to the rebuttable presumption established in section 111(h)(2) of CERCLA.

The first approach is to amend the NCP to designate Federal officials who could perform appropriate assessments of State natural resources at the request of State trustees. States could also perform assessments; however, only such Federal assessments, performed in accordance with the regulations required by section 301(c) of CERCLA, would be entitled to the rebuttable presumption established in section 111(h)(2) of CERCLA.

The second approach would be that only States would perform assessments of State natural resources, and such assessments performed by States would be entitled to the rebuttal presumption in section 111(h)(2).

The final approach would be that only States would perform assessments of State natural resources, but that such assessments would be entitled to the rebuttable presumption in section 111(h)(2) only where they are performed in accordance with regulations promulgated under section 301(C) of CERCLA.

The preamble to the proposed NCP revision solicits comments on the role of Federal trustees in assessing State resources. EPA's decision on this matter will be embodied in the final promulgation of this proposed regulation and the NCP revisions. If EPA concludes that only assessments of natural resources by Federal trustees are eligible for the rebuttable presumption, it would be the responsibility of the State trustee who desires the benefit of a rebuttable presumption to contact the appropriate Federal agency to arrange for such assessments or for Federal review and approval of a State's assessment.

D. Requests for Preauthorization of Natural Resource Restorations

Requests for preauthorizaton of restoration activities may only be submitted to the Agency after a restoration plan is developed and approved by all affected Federal agencies (except EPA) and the State(s).

A request for preauthorization of natural resource restoration must include: (1) A description of the injured natural resource and its uses at the time of the release, and may include a statement of the uniqueness and special significance of the resource(s); (2) a brief description of the extent of injuries (the damage assessment will be an attachment), the hazardous substances

from which the injury resulted, and their sources; (3) the identity of any known potentially responsible parties and any contacts with such parties (supporting information shall be provided as an appendix); (4) the plan, developed by the trustee and approved by affected Federal agencies (other than EPA) and states, for restoration (divided into major phases or segments if appropriate), including the steps necessary to carry out the selected course of action, and reasons for selecting the remedy (a copy of the plan will be an attachment), (5) a description of the steps taken to ensure public comment on and review of the plan; (6) itemized estimates for restoration costs; and (7) the timetable for carrying out the plan.

The plan referred to in item (4) is required by section 111(i) of CERCLA. The trustee must provide adequate opportunity for public comment and hearing on the Plan. While EPA may comment on the Plan during the public comment period, the Plan would not be finally adopted unless and until the Agency preauthorizes the restoration claim. At a minimum, the trustee must provide an adequate opportunity for public review and comment, and a public meeting on the restoration plan. Additional activities may be undertaken in accordance with EPA's *Community Relations in Superfund: A Handbook* (September, 1983). (See also EPA's policy statement entitled *Superfund Community Relations Policy*, May 1983.) EPA's involvement in the development of the restoration plan is likely to ensure that the remedy selected will fit within the CERCLA budgetary constraints, and thus minimize the probability of a subsequent approval by EPA of the trustee's preauthorization request for less than the amount necessary to implement the selected remedy.

Forms and instructions for requesting preauthorization are contained in Appendix A to the regulation. Additional copies may be obtained from any EPA Regional Office. The current addresses for these offices are contained in Appendix I to this preamble. These forms must be filled out completely, signed and submitted to EPA in Washington, D.C.

EPA will endeavor to make final decisions on preauthorization request for restorations within 60 days. If, as a result of EPA's preauthorization decision, the trustee decides to undertake a restoration of narrower scope than that contained in the restoration plan, the trustee is required to notify the public before undertaking the restoration. As discussed above, a notice of intent to request preauthorization will aid EPA's budgeting process and expedite the Agency's decision-making on preauthorization.

E. Actions by Trustees in Emergency Situations

In accordance with section 111(i), EPA will not require preauthoization of restorations in situations where genuine emergency circumstances exist. EPA recognizes that some limited situations may require immediate action in order to avoid irreversible loss or to prevent continuing danger to natural resources (e.g., where continuing contamination must be abated in order to avoid the complete destruction of a resource, or where continuing degradation threatens more and more of the resource or the ecosystem). However, the trustee should, if at all possible, contact the EPA Regional Office serving the area in which the release occurs and notify it that a restoration is underway. Minimally, the trustee must, within five days of initiating the restoration, send a written notification that an emergency restoration is underway to EPA in Washington, D.C. Further, the trustee may undertake only those actions necessary to abate the emergency situation. EPA will require the trustee to follow normal preauthorization procedures before undertaking any action over and above what is necessary to abate the emergency situation. The burden of proving, based on information available at that time, that irreversible harm would have resulted if the emergency restoration were not undertaken, will rest with the trustee. EPA will award claims from the Fund only if it determines that an actual emergency existed requiring immediate restoration measures. The trustee will have the burden of demonstrating that an apparent emergency existed at the time the action was taken, based on information then available. Additionally, the trustee must prove that costs associated with emergency actions were both reasonable and necessary. Of course, claims for emergency assessments and restorations will be paid as funds are available.

The Agency, in the case of an emergency, encourages trustees to contact EPA or the National Response Center (800 424–8802) to report the actual or threatened release. The Agency or the U.S. Coast Guard may determine that immediate response action is required under section 104 of CERCLA. In such cases, the trustee may find that the emergency situation is abated and an emergency assessment or restoration is not required.

V. Submission of Natural Resource Claims

This section describes the election which the trustee must make between filing against the Fund or commencing an action against the responsible party. The section also explains the requirement that trustees submit the claim for an assessment or preauthorized restoration to the responsible party after the restoration is completed, but before the claim is submitted to EPA.

A. Election to Commence a Court Action or File a Claim

Up to the point where a trustee actually files a claim for an assessment or a preauthorized natural resource claim, he is free, pursuant to section 112(a), to decide either to pursue the Fund route or to sue under section 107 of CERCLA for the costs of an assessment or a restoration. This means that the trustee has not made his election at the time a notice of claim for an assessment is filed through the planning process and throughout the assessment, or at the time preauthorization is requested and throughout the conduct of the restoration. That is, a trustee preserves the option of seeking reimbursement either through a court action or an administrative claim throughout the completion of the specific action. However, the filing of an assessment claim under section 112 is an election to proceed against the Fund for assessment costs, and the filing of a restoration claim is an election to proceed against the Fund for restoration costs. EPA will not consider a damage assessment claim or a preauthorized restoration claim while an action for the same costs is before the courts. However, the trustee is free to pursue a claim against the Fund, if all other requirements for filing a claim are satisfied, if he fails to obtain judicial relief through a 107 action. Likewise, the trustee is free to initiate judicial action if his claim against the Fund is denied in part or in whole.

The trustee may, however, elect to simultaneously pursue a claim against the Fund for a damage assessment and a court action against potentially responsible parties for restoration costs and other damages at the same site. The most cost-effective use of the limited Fund resources may be to provide funding to a trustee for an assessment (instrumental in the preparation of many cases) and then encourage the trustee to institute a court action for the costs of conducting any required restoration. Claims may be filed against the Fund only for the costs of restoration.

rehabilitation, replacement or acquiring the equivalent of a natural resource. Other measures of damages are not recoverable from the Fund, but are potentially recoverable under section 107.

B. Presentation of Claims to the Potentially Responsible Party

Section 112(a) states that claims may not be submitted against the Fund unless they have first been presented to the owner, operator, or guarantor of the vessel or facility from which the hazardous substance has been released or to any other person who may be liable under section 107. The requirement applies to trustees with either an assessment or a preauthorized restoration claim. If applicable, notice to potentially responsible parties of a damage assessment claim should include notice that a restoration claim will be filed against the Fund subsequently. If the potentially responsible party or any other person who may be liable under section 107 of CERCLA is unknown, the trustee must conduct a reasonable search for the party believed responsible for the release. The standard for determining what is a "reasonable" search will depend on the circumstances of the release; however, a reasonable search should include a search of deed records, a letter to the last known address requesting a forwarding address, and a notice in a local newspaper requesting information on, or witnesses to the release. These efforts must be documented and available for EPA's review. Additionally, any reply received from the potentially responsible party should be retained and submitted with the claim. If the trustee is unable to locate the potentially responsible party, he may submit a claim against the Fund.

Upon a request from the trustee, EPA will provide that trustee with the names and addresses of potentially responsible parties to whom the Agency has sent notice letters under section 106 of CERCLA, or potentially responsible parties who have reported a release at the site pursuant to section 8(e) of the Toxic Substances Control Act or section 103(a) of CERCLA.

Trustees able to identify the potentially responsible party should make a reasonable effort to settle the claim. If the claim against the potentially responsible party remains unsatisfied after sixty days, the trustee may present the preauthorized claim to the Fund for payment.

C. Presentation to EPA

Only trustees who have obtained EPA's preauthorization of a restoration, performed the work as preauthorized, and who have first presented their claim to the potentially responsible party (when identified) can submit a claim for reimbursement against the Fund. For assessments, trustees must perform the work, and then present their claim to the potentially responsible party, before submitting a claim for reimbursement against the Fund.

The EPA will approve assessment claims only if a fully completed claims form is submitted to EPA in Washington, D.C. (Attention: Director, Office of Emergency and Remedial Response), and the Agency determines that the claim is of sufficient priority to merit reimbursement from the Fund.

In order for a restoration claim to be considered by EPA, a fully completed claim form must be submitted to EPA in Washington, D.C. Claims for restoration may be filed only after the restoration, or an authorized phase of the restoration, is completed.

Forms and instructions for filing a claim are contained in Appendix A to the regulation. Additional copies may be obtained from any EPA Regional Office. The current addresses for these offices are contained in Appendix A to this preamble.

Among other things, the claim forms require: certification that the restoration was preauthorized by EPA, itemization of the claimed costs, and a statement of the procedures followed in searching for or identifying the party believed responsible for the release and the results of any contact. The forms must be filled out completely, signed and submitted to EPA in Washington, D.C., Attention: Director, Office of Emergency and Remedial Response.

VI. EPA Review and Payment of Claims Against the Fund

Upon receiving an assessment claim or preauthorized restoration claim, EPA will notify any known affected parties of the existence of the claim and will attempt to promote and arrange a settlement between the trustee and any person(s) who may be liable. Pursuant to section 112(b)(2)(A) of CERCLA, where the trustee and the responsible party(ies) agree upon a settlement, it is final and binding upon them. Parties to a settlement waive all recourse against the Fund.

Where the responsible party is unknown and cannot be identified, or if no settlement among the parties has been reached, EPA will consider the claim against the Fund. EPA will review the forms and documentation and determine whether all filing requirements have been met. Where the trustee has complied with all filing requirements, the assessment claim or restoration claim will be considered "perfected." It is only after a claim is perfected that the statutory time limits (i.e., 45 days to reach a settlement, 90 days for decision by an Arbitrator, and 20 days for payment) for processing and disposition of claims begins to run. When EPA is unable to evaluate the claim because of omissions in filed documents, the Agency will return the materials and advise the claimant of the specific problems with the filing. When EPA needs additional information to properly evaluate the claim's validity, EPA will suspend further processing of the claim and will request that the claimant provide the necessary information. A claim that EPA returns because of a filing deficiency may be corrected and resubmitted to EPA. Failure of the claimant to provide the information in a timely manner can form the basis for denial of the claim.

Claims will be adjusted using the services of a private claims adjusting firm (section 112(b)(2)(C)). EPA will make awards of restoration claims only to the extent that the Agency determines that the expenditures were reasonable and within the scope of the preauthorization. EPA will utilize several criteria to determine if the trustees' costs for both assessments and restorations are reasonable. These include: (1) A review of the trustee's documentation supporting the decision to perform an activity in-house or to contract it out, and (2) a determination that all contracts were awarded using maximum open and free competition. These criteria are designed to conserve Fund monies and ensure against fraud and abuse. In most instances, applicable State and Federal procurement practices (formal advertising, competitive negotiations or other procurement methods) will meet the test for contracts. Trustees may demonstrate alternative costs by providing cost estimates from firms qualified in such areas, the results of competitive procurements for similar activities, or documentation of market costs based on similar procurements by others.

Since only preauthorized restoration claims may be submitted to the Fund, the Agency will not deny such claims, except to the extent the costs claimed were not reasonable or necessary or in accordance with the preauthorization. Denied restoration claims will be referred to the Board of Arbitrators. However, damage assessment and emergency restoration claims may be submitted without preauthorization. If the Agency determines that a damage assessment or emergency restoration

claim is not of sufficient priority, it will deny the claim. Assessment claims denied on such grounds will not be referred to the Board of Arbitrators.

Where a State trustee disagrees with the amount of an award, the matter can be referred for resolution to the Board of Arbitrators (the "Board") established by EPA. The trustee bears the burden of proof in arbitration (section 112(b)(4)(D) of CERLA). Additionally, where EPA declines to make an award on a claim, the State's claim will be referred to the Board. However, decisions by EPA to deny damage assessment claims on the basis of Fund priorities will not be referred to the Board. Title 40 CFR Part 305, proposed elsewhere in today's Federal Register, defines the role and jurisdiction of the Board of Arbitrators. Federal trustees will utilize internal Executive Branch dispute resolution procedures, including resolution by the Executive Office of the President.

EPA will pay the award within 30 days. Any augmentation of the award by the Board of Arbitrators or a court will be paid within 20 days of the expiration of the appeal period for such arbitral or judicial decision, unless an appeal is in fact taken. In order for the claimant to receive payment, the claimant must waive further recourse against the Fund and subrogate his or her rights to the United States (section 112(c) of CERCLA). A claimant receiving an award from the Fund must retain the documentation supporting the claim for a period of six years or until EPA has pursued a cost recovery action against potentially responsible parties.

VII. Statute of Limitations

Section 112(d) of CERCLA provides:

> No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later * * *.

CERCLA was enacted on December 11, 1980. Therefore, after December 13, 1983, trustees could not file claims for injury to natural resources where the loss was discovered prior to December 11, 1980. Congress designated passage of the Act or "discovery of the loss" as the event which triggers the time limitation within which the trustee must file a claim. This raises the issue of when the loss may be considered to be "discovered" for purposes of the statute of limitations.

While the legislative history of CERCLA does not speak directly to this point, Congress did not intend that "Date of discovery" be used to indefinitely extend the period within which trustees could act. (Senate Report 96-848, p. 67.) However, "date of discovery of the loss" is not a self-defining term. While a citizen may have discovered a loss at some early date, that knowledge cannot reasonably be imputed to the trustee. EPA believes that the date of discovery must be linked to some formal indication that the trustee has knowledge of the loss. The reliability and adequacy of the information are of obvious concern to the trustee. As a public official, the trustee can only be expected to act (i.e., to prepare to file a claim) on information that is reliable (i.e., confirmed by some Federal, State, or local government official) and factually adequate (i.e., sufficiently describes the loss). The initial observation of natural resource injury may not in every case constitute discovery by the trustee. At the other end of the spectrum, the damage assessment, which is usually performed some time after identification of the loss, will take place long after the actual point of discovery. Somewhere in the period between these events, a document or memorandum prepared for the trustee should identify for the first time the natural resources injured, the types of injury, and the hazardous substances involved. This document or memorandum should provide the reasonably diligent trustee with adequate information to constitute discovery.

While the date of discovery will be determined by the facts of each case, the Agency proposes the following definition of "date of discovery", which incorporates information that must be available to make a determination that a loss compensable under CERCLA has occurred:

> The date on which the trustee became aware of the injury to the natural resource. For an injury that can be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee verifying the observed injury to the natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.
>
> For an injury that cannot be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee, including such sampling and laboratory analysis as is necessary, which identifies the injured natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.

This proposed definition attempts to strike a balance between the earliest possible date and the point at which a reasonable basis for a decision exists.

VIII. Regulatory Status and Required Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to the E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

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

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

EPA has determined that this regulation is a non-major rule under Executive Order 12291 because it is unlikely to result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." EPA certifies that this regulation will not have a significant impact on a substantial number of small entities, because only Federal and State trustees may submit claims under this regulation. Further, this regulation imposes no capital expenditures, nor any compliance requirement on any industrial sector.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., the reporting or recordkeeping provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB and the public.

List of Subjects in 40 CFR Part 306

Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: February 28, 1985.

Lee M. Thomas,

Administrator.

[Note.—This Appendix will not appear in the CFR.]

Appendix I

Environmental Protection Agency—Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203
Environmental Protection Agency—Region II, 26 Federal Plaza—Room 402, New York, New York 10278
Environmental Protection Agency—Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106
Environmental Protection Agency—Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365
Environmental Protection Agency—Region V, 230 South Dearborn Street, 13th Floor (HR–13), Chicago, Illinois 60604
Environmental Protection Agency—Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270
Environmental Protection Agency—Region VII, 324 East 11th Street, Kansas City, Missouri 64016
Environmental Protection Agency—Region VIII, 1860 Lincoln Street, Denver, Colorado 80095
Environmental Protection Agency—Region IX, 215 Fremont Street, San Francisco, California 94105
Environmental Protection Agency—Region X, 1200 Sixth Avenue, Seattle, Washington 98101.

Part 306, Title 40 of the Code of Federal Regulations is added as set forth below.

PART 306—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) NATURAL RESOURCE CLAIMS PROCEDURES

Subpart A—General

Sec.
306.10 Purpose.
306.11 Scope and applicability.
306.12 Definitions.
306.13 Penalties and statute of limitations.

Subpart B—Natural Resource Claims

306.20 Who may present claims.
306.21 Scope of coverage.
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Appendix A—Application for Preauthorization of Natural Resource Restoration Claim
Appendix B—Claim for CERCLA Natural Resource Action

Authority: Secs. 111 and 112, Pub.L. 96–510, 94 Stat. 2767–2811 (42 U.S.C. 9601 et seq.) and E.O. 12316, Sec. 7(a) and 7(e), 46 FR 42237, (August 20, 1981).

Subpart A—General

§ 306.10 Purpose.

This regulation establishes forms and procedures for presenting claims for injury to, or destruction, or loss of natural resources to the Fund.

§ 306.11 Scope and applicability.

Claims for injury to, or destruction, or loss of natural resources, including costs of damage assessment, may be submitted only through the procedures established by this regulation. Under this regulation, trustees may bring claims for the cost of restoring, rehabilitating, or replacing, or acquiring the equivalent of natural resources injured as a result of the release of a hazardous substance, and the costs for assessing injury to such natural resources.

§ 306.12 Definitions.

Terms not defined in this section or restated herein, have the meaning given by section 101 of CERCLA. *Except when otherwise specified:*

(a) "Act," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) "Board of Arbitrators," or "Board" means a panel of one or more persons selected in accordance with section 112(b)(4)(A) of CERCLA and governed by the provisions in 40 CFR Part 305.

(c) "CERCLA," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

(d) "Claim," means a demand in writing for a sum certain.

(e) "Claimant," means any person who presents a claim for compensation under section 112 of CERCLA.

(f) "Damage assessment claim," means a claim for assessment costs described in section 111(c)(1) of CERCLA.

(g) "Date of discovery," means the date on which the trustee became aware of the injury to the natural resource: (1) For an injury that can be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee verifying the observed injury to the natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance; or (2) For an injury that cannot be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee, including such sampling and laboratory analysis as is necessary, which identifies the injured natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.

(h) "Fund," means the Hazardous Substance Response Trust Fund established under section 221 of CERCLA.

(i) "Hazardous substance," means (1) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (3) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (4) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (5) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(j) "Lead trustee," means a trustee authorized to act on behalf of all affected trustee where there are multiple

trustees because of co-existing or contiguous natural resources or concurrent jurisdiction.

(k) "National Contingency Plan," or "NCP," means the National Oil and Hazardous Substances Contingency Plan developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR Part 300).

(l) "Natural resources," means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act), any State or local government, or any foreign government.

(m) "Notice of claim," means a written notice of intent to file a claim in accordance with §306.22 of this Part.

(n) "Perfected," means the point at which EPA determines that the filing requirements for a claim have been met.

(o) "Potentially responsible party," means either: (1) An owner, or operator of the vessel or facility from which there is a release or threatened release of a hazardous substance, or (2) any other person who may be liable under section 107 of CERCLA.

(p) "Preauthorization," means EPA's approval to submit a claim for reimbursement to the Fund.

(q) "Response action," means remove, removal, remedy, and remedial action.

(r) "Response claim," means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA.

(s) "Restoration," or "Restoring," means the restoration, rehabilitation, replacement, or acquiring the equivalent of any natural resource injured, destroyed, or lost as a result of a release of a hazardous substance.

(t) "Restoration claim," means a preauthorized demand in writing for a sum certain for the cost of restoring, rehabilitating, replacing or acquiring the equivalent of any natural resource injured as a result of the release of a hazardous substance.

(u) "Trustee," means any Federal natural resources management agency designated in subpart G of the NCP, and any State agency that may prosecute claims for damages under section 111(b) of CERCLA.

§ 306.13 Penalties and statute of limitations

(a) Any person who knowingly gives or causes to be given any false information as a part of a claim against the Fund may, upon conviction, be fined up to $5,000 or imprisoned for not more than one year, or both.

(b) No damage assessment claim may be filed against the Fund more than three years from the date of the discovery of the loss of or injury to the natural resource for which the assessment was made.

(c) No restoration claim may be filed against the Fund unless:

(1)(i) An assessment claim with respect to the same natural resource was filed with EPA within three years from the date of the discovery of the loss of or injury to the natural resource for which the restoration claim is made; and

(ii) Any known potentially responsible parties were informed prior to the filing of such assessment claim so that a subsequent restoration claim may be presented to the Fund; or

(2) That preauthorized restoration claim is made to EPA within three years from the date of the discovery of the loss of or injury to the natural resource for which that claim is made.

Subpart B—Natural Resource Claims

§ 306.20 Who may present claims.

Damage assessment and restoration claims may be asserted by:

(a) Any trustee for the natural resource in question, except as provided in § 306.20(b).

(b) If a release results in injury to, destruction or loss of natural resources represented by multiple trustees, a "lead trustee" selected by the trustees, to assert the claim on behalf of all trustees. Should the trustees fail to agree on a lead trustee, EPA in its sole discretion shall appoint a lead trustee for the purposes of asserting a claim against the Fund on behalf of all trustees.

§ 306.21 Scope of coverage.

(a) Subject to the provisions of this subpart, only two types of costs are eligible for reimbursement from the Fund under this Part:

(1) Necessary and reasonable restoration costs where the injury, loss or destruction resulted from the release or threat of release of a hazardous substance from a vessel or facility; and

(2) Necessary and reasonable costs associated with:

(i) Assessing both short-term and long-term injury to, destruction of, or loss of any natural resource resulting from a release or threat of release of a hazardous substance; and

(ii) Administrative costs and expenses reasonably necessary for, and incidental to, the restoration.

(b) No money in the Fund may be used to pay natural resource claims where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(c) Natural resource claims may not be presented where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980, the effective date of the Act.

§ 306.22 Preauthorization.

(a) Except as provided in § 306.23, no claim may be asserted against the Fund for costs of restoration of natural resources, unless such claim has been preauthorized by the Administrator.

(b) Trustees may submit requests for preauthorization to the Administrator, EPA, Washington, D.C. 20460, Attention: Director, Office of Emergency and Remedial Response.

(c) Requests for preauthorization may be submitted on EPA Form _____, found at Appendix A to this part.

(d) An application for preauthorization must include, where possible:

(1) A description of the location and nature of the natural resource injured, destroyed or lost;

(2) A description of the location and nature of the release of a hazardous substance from which the injury to or loss of a natural resource resulted, including the date upon which the release was discovered;

(3) The date on which the injury to or loss of the natural resource was discovered;

(4) A plan for the use of the Funds for which the claim will be made, developed in accordance with paragraph (e) of this section;

(5) A copy of the damage assessment, if any, relating to the natural resource at issue, including any determination by EPA on whether to pay a damage assessment claim and any judicial order with respect to the damage assessment;

(6) A description of the methods used to assess the damage or injury to the natural resource;

(7) Reference to the applicant's authority to act as trustee or lead trustee for the injured natural resource;

(8) Identity of other known or potential trustees for resources at or about the same location;

(9) The identity of known potentially responsible parties, and any contact with such parties; and

(10) Proposed schedule and projected costs of restoration activities.

(e) The plan required in § 306.22(d)(4) shall meet the following requirements:

(1) The plan shall be developed by the trustee and adopted by any affected Federal agency (other than EPA) and by the Governors of any States which managed the natural resource in question or to which the natural resource belonged or appertained;

(2) The trustee shall allow adequate public notice of the plan and an opportunity for a hearing. Notice of the plan shall also be given to EPA. In submitting the plan to EPA as part of the preauthorization, the trustee shall include responses to all relevant public comments; and

(3) The plan will not be adopted unless and until it is approved by EPA.

(f) The trustee may modify the preauthorization request at any time before commencing restoration work which is the subject of the modified request.

§ 306.23 Emergency actions to avoid irreversible loss.

(a) Preauthorization is not required with respect to a situation requiring immediate action to:

(1) Avoid substantial loss of evidence of the release from which injury to a natural resource resulted;

(2) Avoid an irreversible loss of a natural resource; or

(3) Prevent or reduce any continuing danger to a natural resource, or similar need for emergency action.

(b) Trustees who undertake actions under § 306.23(a) must, within five days, notify EPA in writing that such action is underway.

(c) The burden of proving that emergency action was required shall rest with the trustee.

(d) The trustee must request preauthorization for that portion of the restoration which is not immediately required.

§ 306.24 Review of natural resource preauthorization applications.

(a) The Administrator shall review each preauthorization application and will notify the trustee or the lead trustee of the decision.

(b) Each request for preauthorization will be evaluated based on the following non-exclusive list of criteria:

(1) The seriousness of the problem when compared with competing uses of the Fund;

(2) The uniqueness or importance of the affected natural resource as stated by trustee;

(3) The extent to which the injury has been or may be addressed by a response action;

(4) The extent to which the claimant is liable for the release or threat of release from which the injury to the natural resource resulted.

(c) The Administrator may preauthorize all or part of a proposed restoration.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any restoration.

(2) If, as a result of EPA's preauthorization decision, the trustee plans to undertake a restoration action of narrower scope than that contained in the restoration plan, the trustee shall notify the public before undertaking the restoration.

(d) If EPA denies a preauthorization request because of an insufficient balance in the Fund or the low priority assigned to the restoration when weighed against other requests, the trustee may resubmit the application in another fiscal year. If a preauthorization request is denied because of substantive inadequacies in the damage assessment or restoration plan, the trustee may resubmit the request only after correcting the noted deficiencies.

§ 306.25 Requesting payment from the responsible party.

(a) Where the responsible party is unknown, the trustee must make a goodfaith, reasonable effort to identify the responsible party prior to submitting a claim. If the responsible party is identified, the trustee must then comply with the procedures of § 306.25 (a) and (b). Where a responsible party cannot be identified, the trustee may submit a claim to the Fund pursuant to subpart C. Claims submitted under this subsection must be accompanied by documentation of efforts to identify responsible parties.

(b) A trustee or lead trustee must present both damage assessment claims and preauthorized restoration claims to all known responsible parties at least 60 days before filing a claim against the Fund. The presentation to the responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name(s) of the State(s), Commonwealth(s), or U.S. Trust Territory(ies), or Federal agency(ies), or other authorized trustee(s);

(2) The name(s) title(s), and address(es) of any authorized representative or lead trustee;

(3) The location of the injuries;

(4) The owner(s) of the property, where the release of a hazardous substance from which injury to a natural resource resulted;

(5) The date(s) of the release and its discovery;

(6) A copy of the damage assessment;

(7) The amount of the request (in dollars) including costs of any preliminary resource investigation, and the assessment, or the restoration activities; and

(8) If applicable, notice of intent to file subsequently a restoration claim against the Fund subsequently.

(c) If the trustee and the responsible party agree to a settlement, it shall be final and binding upon them, and the trustee(s) will have waived all recourse against the Fund for damage arising out of the release which resulted in injury to the natural resource at issue. This waiver shall not affect the rights of the trustee to proceed against other potentially responsible parties for further or additional relief.

(d) If the claim is denied by the party believed responsible, and has not been satisfied after 60 days of presentation to such party, the trustee may submit a claim to the Fund in accordance with subpart D.

Subpart C—Procedures for Filing and Processing Natural Resource Claims

§ 306.30 Filing procedures.

(a) For purposes of this regulation, a natural resource claim is deemed perfected when EPA determines that the claim complies fully with all filing requirements. When the claim is perfected, a notice will be provided to the trustee of EPA's receipt and acceptance for evaluation.

(b) A restoration claim must be submitted on EPA Form _____ and must include:

(1) Documentation showing that the claimed restoration activities were preauthorized by EPA; and

(2) Documentation showing that the restoration activity was accomplished; and

(3) Documentation that a search in accordance with 306.26 was conducted to identify potentially responsible parties and any contacts with such parties; and

(4) Substantiation that all claimed costs are reasonable and necessary. The following criteria will be used to determine if the costs are reasonable and necessary:

(i) Documentation supporting the trustee's decision to use employees or contractors to carry out restoration activities, as applicable;

(ii) Documentation demonstrating that contracts were awarded using maximum open and free competition.

The trustee may not seek compensation for restoration expenses that have not been preauthorized.

(c) A natural resource damage assessment claim must be submitted on EPA Form _____ and must include:

(1) Documentation showing what the assessment activity accomplished; and

(2) Documentation that a search in accordance with § 306.25 was concluded to identify potentially responsible parties and any contacts with such parties; and

(3) Substantiation that all claimed costs are reasonable and necessary. The following criteria will be used to determine if the costs are reasonable and necessary:

(i) Documentation supporting the trustee's decision to use employees or contractors to carry out restoration activities, as applicable;

(ii) Documentation demonstrating that contracts were awarded using maximum open and free competition.

(d) Trustees (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and signed by the trustee or authorized representative. The time limitations of §306.31(g) begin from the date the amendment is filed.

(e) Trustees may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same injury to a natural resource. EPA will return claims presented under this subpart when the Agency determines that a trustee has initiated an action for recovery of the same costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 306.31 Verification, settlement, and adjustment requirements.

(a) Upon receipt of a natural resource claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the trustee with written notification of its deficiencies.

(b) A claim returned to the trustee for failure to comply with the filing requirements may be resubmitted to EPA. Resubmitted claims are new claims for purposes of the time limitations of paragraph (g) of this section.

(c) Where a claim complies with all filing requirements, it is deemed perfected for purposes of this regulation.

(d) After a claim is perfected, EPA will attempt to promote a settlement between the claimant and any known responsible parties. If the parties agree upon a settlement, it is final and binding upon them, and they are deemed to have waived all recourse against the Fund for compensation arising out of the incident giving rise to the settlement.

(e) If no settlement is reached within 45 days of the filing of a perfected claim (unless extended in accordance with § 306.33), the Administrator will proceed to determine whether to make an award on the claim and, if an award is made, the amount of such award. Awards will be made:

(1) Only for costs which are reasonable and necessary;

(2) In the case of claims for restoration costs, only to the extent that the claim was preauthorized by EPA pursuant to 40 CFR 306.24;

(3) In the case of claims for damage assessments, only to the extent the Administrator determines that the claim is of sufficient priority to merit Fund expenditure.

Where a restoration activity is determined to have been ineffective due to acts or omissions of the trustee, payment of the claim will be adjusted to disallow the costs associated with the activity. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(f) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the trustee. This information must be submitted within 30 days unless specifically extended by EPA. The failure of the trustee to provide in a timely manner the requested information without reasonable cause can be used by EPA as a basis for denying the claim. The time limitations of paragraph (g) of this section will be suspended during this period.

(g) Where settlement in accordance with either paragraph (d) or (e) of this section is not reached within 45 days of the claim's perfection (unless extended in accordance with § 306.33), EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award and refer the claim to the Board of Arbitrators under the provisions of 40 CFR Part 305, except that, if the Administrator's decision is made pursuant to subsection (e)(3), the claim shall not be referred to the Board of Arbitrators.

(h) If the claimant is dissatisfied with the amount of an award, the claimant may submit claim to the Board of Arbitrators in accordance with 40 CFR Part 305.

(i) Notice of an award under paragraph (g)(1) of this section will be given by First Class Mail within five days of the date of the decision. Payment of approved claims will be made according to § 306.40 of this regulation.

(j) Not withstanding any provision of this Part, no claims submitted by Federal trustees shall be submitted to the Board.

§ 306.32 Records retention.

A trustee receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim and to provide EPA with access to such records. These records must be maintained for at least six years from the date of the award or until cost recovery is completed by EPA.

§ 306.33 Extension of settlement period.

(a) Where EPA determines that, because of a large number of claims arising from an incident or set of incidents, it is in the best interest of the parties concerned, the time for prearbitral settlement (§ 306.31) or for rendering an arbitral decision (40 CFR 305.43) may be extended by up to 60 days.

(b) Where all parties to the claim agree, the time limits of § 306.31 and 40 CFR 305.43 may be extended for a mutually agreed-upon time period.

Subpart D—Payments and Subrogation

§ 306.40 Payment of approved claims.

(a) An award against the Fund can only be paid when monies are available. An award against the Fund in excess of available appropriations in the Fund may be paid only when additional money is collected, appropriated, or otherwise added to the Fund. As appropriations in the Fund become available, payment of awards will be made in the order in which the claim was finally determined.

(b) Subject to the conditions in paragraph (a), payment will be made, as applicable, within:

(1) 30 days of EPA's decision to make an award in accordance with § 306.31(g)(1); or

(2) 20 days of the expiration of the period for appeal of any arbitral award; or

(3) 20 days of the final judicial decision of any appeal taken.

§ 306.41 Subrogation of claimants' rights to the fund.

(a) Payment of a claim by the Fund is subject to the United States' acquiring by subrogation all rights of the trustee to recover the cost of assessment or restoration awarded by the Fund from the person or persons liable for such release to the extent to which the claimant is compensated.

(b) Any person, including the Fund, who compensates any trustee in accordance with the Act for restoration costs resulting from a release of a hazardous substance will be subrogated to all rights, claims, and causes of action for such costs of restoration that the trustee has under the Act or any other law.

Appendix A—Application for Preauthorization of Natural Resource Restoration Claim

United States Environmental Protection Agency, Washington, D.C. 20460

Application for Preauthorization of Natural Resource Restoration Claim

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. Where applicable, insert the word "none." Use additional sheets if necessary. Read carefully the specific instructions on the opposite page.

I. Name, Title and Address of Trustee/Lead Trustee (Attach delegation establishing authority to represent all affected trustees)

II. Name, Title and Address of Authorized Agent (if any) to Represent Trustee/Lead Trustee

III. Relates to Actual Release of a Hazardous Substance
- A. Date/time (am/pm) of release (if known)
- B. Date of discovery of loss of natural resource(s)
- C. Location of release and injured natural resource(s)
- D. Description of release
- E. Description of natural resource(s)
- F. Are any potentially responsible parties (PRPs) known to you?
  _____ Yes. If yes, attach a list of identified PRPs and describe results of any contacts with them.
  _____ No. If no, describe efforts to identify PRPs.

IV. Relates to Natural Resource Damage Assessment
- A. Provide date/briefly describe the findings of the damage assessment.
- B. Briefly describe the methodology used to assess the natural resource injury.
- C. Was court action filed to recover assessment costs?
  _____ Yes. If so, describe the results and provide case name, case number, jurisdiction of the court, and date of determination.
  _____ No.

EPA Form_____ (2/85)
- D. Was a notice of intent to submit a claim for an assessment filed with EPA?
  _____ Yes. If so, give date.
  _____ No.
- E. Was a claim filed against the Fund to recover assessment costs?
  _____ Yes. If so, give date, describe the results and attach a copy of the Agency's determination.
  _____ No.

V. Relates to Natural Resource Restoration Plan
- A. Briefly describe the options considered in developing the restoration plan. (Attach copy of plan)
- B. Describe in detail the option(s) selected as the basis for the restoration plan.
- C. Briefly describe the procedures used to notify the public and to obtain public comments.
- D. Was the restoration plan adopted by all trustees and affected Federal agencies?
  _____ Yes. (Provide documentation)
  _____ No. If no, explain.

VI. Relates to Preauthorization of Restoration
- A. Briefly describe the restoration for which you seek preauthorization.
- B. Do you propose more than one phase?
  _____ Yes. If yes, describe each phase.
  _____ No.
- C. Was a notice of intent to submit a claim for the restoration filed with EPA?
  _____ Yes. If yes, give date.
  _____ No.

VII. Projected Costs of Restoration		EPA—Approved Costs (EPA Use Only)		
		Phase 1	Phase 2	Phase 3
Restoration	$	$	$	$
Other	$	$	$	$
Total	$	$	$	$

VIII. Is This Proposal Within EPA's Planned Annual Budgetary Appropriation?
_____ Yes. _____ No.

IX. Does This Application Revise a Previous Request?
_____ Yes. _____ No.

EPA Docket Number of Previous Request

Certification

I certify that all information contained herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.
Signature of Claimant_____
Date _____

Civil Penalty for Presenting Fraudulent Claim

The claimant will forfeit and pay to the United States $2,000, plus double the amount of damages sustained by the United States. (31 USC 3729 and 3730.)

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)

Instructions for Applying for Preauthorization of Natural Resource Restoration Claim

I. Name any Federal natural resource management agency, principal State, commonwealth, U.S. Trust Territory, or other political entity acting on behalf of all affected trustees. Provide a list (including name, title and address) of all trustees for the injured natural resources and supporting evidence authorizing them to prosecute claims for damages, as defined in 111(b) of CERCLA. If you are the lead trustee, provide this evidence and discribe your efforts to identify and coordinate with other trustees.

II. Self-explanatory.

III. A. provide documentation of the date and time of the release, if known.

B. Provide the date of the initial report first establishing that the injury resulted from the release (III. A.) and provide a copy. (Date of the actual assessment is required in IV. A.)

C. Provide the name of the city or town and State where the release and injury occurred. If the location is outside the city's limits, indicate the distance between it and the nearest city or town.

D. Describe in detail all the known facts and circumstances associated with the release of the hazardous substance. Include the name of the substances released (see "Superfund Notification Requirement and Reportable Quantity Adjustments", 40 CFR Part 302), and the type of facility that released the substances (e.g., any building or structure, pipe or pipeline, well, lagoon, landfill, storage container, motor vehicle).

E. Describe in detail the resource(s), its use(s) prior to the release and injury, and its uniqueness or special characteristics. Indicate whether its use and characteristics at the time of the injury were residential, commercial/industrial, agricultural, forestral, recreational, mixed use, etc.

F. List all potentially responsible parties (PRPs) known to you. Describe efforts to locate PRPs, date of presentation of your claim, and any reply from the PRPs.

IV. A. Summarize the natural resource impacts, including known and potential injury to both media and living organisms. Attach a copy of the damage assessment. Also indicate who approved the assessment, who conducted the assessment, when it was conducted and when it was completed.

B. Does the methodology selected comply with the section 301 damage assessment regulations, or some other reasonable methodology?

C. Self-explanatory.

D. Supply date. EPA recommends that trustees submit a notice of intent to file an assessment claim by means of the annual planning process.

E. Self-explanatory.

V. A. Identify the options considered, e.g. restoration, replacement, rehabilitation, acquisition of the equivalent, or "no action". (Hereinafter, "restoration" refers to restoring, rehabilitating, replacing, or acquiring the equivalent of injured natural resources).

B. Describe the basis for selection of the alternative(s) (e.g., cost-effectiveness, cost-benefit, total cost, impact on affected ecosystems). Attach a copy of the restoration plan.

C. For example, was there a town meeting, public hearing, etc.? How were the public's concerns addressed?

D. Self-explanatory.

VI. A. Provide the timetable for discrete activities, including start and completion

dates. Indicate the projected schedule for submission of the claim(s).

B. Trustees may propose claims for operable units (i.e. phases) of work. If appropriate, include the timetable for each phase of the planned activities and the projected schedule for submitting each preauthorization request and subsequent claim.

C. Supply date. EPA recommends that trustees submit a notice of intent to file a restoration claim by means of the annual planning process.

VII. Provide an itemization of the estimated costs of restoring the injured natural resources for each category. For the costs projected for actions no identified (i.e., "Other"), provide a written statement indicating the nature and extent of said activity. Supply the basis for all estimated costs. If phased claims are requested, provide separate itemization of costs by phase. Explain why the estimated costs and expenses are reasonable and necessary for restoring the injured natural resource(s).

VIII. If EPA notified you that a sufficient level of funding exists to cover your planned restoration, please check "Yes".

IX. Self-explanatory.

Appendix B—Claim for CERCLA Natural Resource Action

United States Environmental Protection Agency, Washington, D.C. 20460

Claim for CERCLA Natural Resource Action

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. Where applicable, insert the word "none." Use additional sheets if necessry. Read carefully the specific instructions on the opposite page. Check as appropriate: ☐ Assessment Claim ☐ Restoration Claim

I. Name, Title, and Address of Trustee/Lead Trustee

II. Name, Title, and Address of Authorized Agent (if any) to Represent Trustee/Lead Trustee

III. EPA ID Number and Date (For Preauthorized Restoration Claims Only)

IV. Relates to Actual Release of a Hazardous Substance

A. Date/time(am/pm) of release (if known)

B. Date of discovery of loss of natural resource(s)

C. Location of release and injured natural resource(s)

D. Was the claim presented to the responsible party?

_____ Yes. If yes, give date and results.

_____ No.

V. Relates to Damage Assessment Claims Only

A. Are claimed costs contained within EPA's annual appropriations?

_____ Yes. If so, give date.

_____ No.

B. Briefly describe the findings of the damage assessment.

C. Briefly describe the methodology used to assess the natural resource injury.

VI. Relates to Restoration Claims Only

A. Does this claim relate to a previously filed assessment claim?

_____ No.

_____ Yes. If yes, give date and number of claim.

B. Indicate date of Agency preauthorization of restoration claim.

EPA Form _____ (2/85)

C. Indicate date of completion of restoration project (or preauthorized phase).

D. Detail, if appropriate, how the incident's descrption and activities as completed have deviated from the given in the approved preauthorization and the reasons for it.

VII. Amount of Damage Assessment Claim (Attach all documents that support this claim)

A. Damage Assessment Claim $

B. Other (Specify and justify $

C. Total $

VIII. Amount of Restoration Claim (Indicate whether the claim is for total or partial authorized costs, and attach all documents that support this claim)

	Preauthorized Costs	Actual Costs
A. Restoration, rehabilitation, replacement, or acquisition of the equivalent	$	$
B. Other (Specify and justify)	$	$
	$	$
C. Total	$	$

Check One: ☐
Total authorized costs ☐
Partial authorized costs ☐

Certification

I certify that the information contained herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this claim and access to the site for purposes of inspection.
Signature of Claimant_____
Date _____

Civil Penalty for Presenting Fraudulent Claim

The claimant will forfeit and pay to the United States $2,000, plus double the amount of damages sustained by the United States. (31 USC 3729 and 3730.)

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)

Instructions for Submitting a Claim for Natural Resource Action

I. Name any Federal natural resource management agency, principal State, commonwealth, U.S. Trust Territory, or other political entity acting on behalf of all affected trustees.

II. Self-explanatory.

III. See the upper right-hand corner of the approved preauthorization form.

IV. A. Provide documentation of the date and time of the release, if known.

B. Provide the date of the initial report first establishing that the injury resulted from the release of a hazardous substance (IV. A.). (Date of actual damage assessment required in V. B.).

C. Provide the name of the city or town and State where the release and the injury occurred. If the location is outside the city's limits, indicate the distance between it and the nearest city or town.

D. List all potentially responsible parties (PRPs) known to the trustee. Describe efforts to locate PRPs, date of presentation of your claim, and any reply from the PRPs.

V. A. It is recommended that the trustee submit a notice of intent to file an assessment claim by means of the annual planning process. If you have followed this process, give the date of receipt of Federal government approval. If you check "No", indicate which of these two conditions apply: (1) you submitted a notice of claim as part of the annual planning process, but the assessment was deemed a low priority, or (2) you declined to file a notice of claim.

B. Summarize the natural resource impacts, including known and potential harm to both media and living organisms. Attach a copy of the damage assessment. Also indicate who approved the assessment, who conducted the assessment, when it was conducted and when it was completed.

C. Does the methodology selected comply with the Section 301 damage assessment regulations, or some other reasonable methodology? Specify if you are asserting that your assessment is entitled to rebuttable presumption.

VI. A. If this restoration claim relates to a previously filed assessment claim for the same injury. Supply the date on which the claim was filed and the number assigned by EPA. (Hereinafter, "restoration" refers to restoring, rehabilitating, replacing, or acquiring the equivalent of an injured natural resource).

B. C. Self-explanatory.

D. Describe and justify any methods used in taking the natural resource action that deviated from the preauthorized approach. If such deviation required modifying the preauthorized actions or project costs, a request for preauthorization detailing such modifications must be resubmitted and approved. (see § 306.——)

VII. Document that all actions conducted by employees were more economical than using contractors and that all contractors were selected through maximum competition.

A. Submit proof of all aspects of the claimed costs associated with ascertaining actual injury to natural resources.

B. Submit proof of all aspects of the claimed costs associated with actions not identified in "A" above.

VIII. Document that all actions conducted by employees were more economical than using contractors and that all contractors were selected through maximum competition.

A. Supply preauthorized costs and actual

costs. Submit proof of all aspects of the claimed costs associated with restoration of injured natural resources and a written statement indicating the nature and extent of such activity.

B. Supply preauthorized costs and actual costs. Submit proof of all aspects of the claimed costs associated with actions not identified in "A" above.

If EPA approved a phased approach authorizing partial reimbursement, check "partial authorized costs;" if EPA approved total reimbursement, check "total authorized costs."

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