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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 11; at 9 am.

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

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

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

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

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, and 872

Federal Employees' Group Life Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations eliminate one of the major restrictions on obtaining life insurance coverage under the Federal Employees' Group Life Insurance (FEGLI) Program—the under age-50 requirement. Accordingly, an employee who has waived insurance coverage may cancel the waiver and become insured *at any age* if at least 1 year has elapsed since the effective date of the waiver and if the employee provides satisfactory evidence of insurability.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Agatha Gray, (202) 632-0003.

SUPPLEMENTARY INFORMATION: On August 27, 1985, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** (50 FR 34707) to eliminate the under age-50 requirement for cancellation of a waiver of insurance coverage under the FEGLI Program. Two Federal agencies sent written comments during the 60-day comment period. Several agency life insurance officers provided oral comments. All the written and oral comments offered expressed support for our proposal to eliminate the under age-50 requirement for cancellation of a waiver of life insurance coverage.

One agency suggested that we revise our Standard Form 2822, Request for Insurance, to inform employees of the requirements to continue life insurance as a retiree. The agency believes that such a revision would ensure that employees make informed decisions on whether to cancel previous waivers or declinations. This suggestion will be considered when we revise the insurance forms.

We have also made amendments to the proposed regulations on our own initiative because of recent inquiries about the cancellation of the waiver process. Under the proposed regulations, we neglected to eliminate the under age-50 requirement for employees with additional optional insurance coverage of at least one but fewer than five multiples of annual pay who wish to increase the number of multiples. Thus, the final regulations have been amended to eliminate all references to the under age-50 requirement for cancellation of waivers of insurance coverage.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects in 5 CFR Parts 870, 871, and 872

Administrative practice and procedure, Government employees, Life insurance.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Parts 870, 871, and 872 as follows:

1. The authority citation for Parts 870, 871, and 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

PART 870—BASIC LIFE INSURANCE

2. In § 870.204, paragraph (b) is revised to read as follows:

§ 870.204 Waiver and cancellation of waiver of insurance coverage.

* * * * *

(b) An employee who has filed a waiver of basic insurance coverage may cancel the waiver and become insured if:

(1) At least 1 year has elapsed since the effective date of such waiver; and

(2) He/she furnishes satisfactory evidence of insurability.

* * * * *

PART 871—STANDARD OPTIONAL LIFE INSURANCE

3. In § 871.205, paragraph (a) is revised to read as follows:

§ 871.205 Cancellation of declination.

(a) An employee who has declined the standard optional insurance may elect it if:

(1) At least 1 year has elapsed since the effective date of his/her last declination or waiver; and

(2) He/she furnishes satisfactory evidence of insurability.

* * * * *

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

4. In § 872.205, paragraphs (a) (1), (3), and (4) are revised to read as follows:

§ 872.205 Cancellation of declination.

(a)(1) An employee who has declined the additional optional insurance may elect it if:

(i) At least 1 year has elapsed since the effective date of his/her declination or waiver; and

(ii) He/she furnishes satisfactory evidence of insurability.

* * * * *

(3) An employee who has in force additional optional insurance of at least one but fewer than five multiples of annual pay may increase the number of multiples if:

(i) At least 1 year has elapsed since the effective date of his/her last election of fewer than five multiples (including a reduction in the number of multiples); and

(ii) He/she furnishes satisfactory evidence of insurability. The requirement that at least 1 year elapse since the effective date of the last election does not apply when an employee elected fewer than five multiples because of the limitation on the number of multiples which may be elected under paragraph (a)(2) or (a)(4) of this section.

(4) An employee who has in force additional optional insurance of at least one but fewer than five multiples of annual pay may elect to increase the number of multiples upon his/her marriage or the acquisition of an

unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter. To be valid, the election to increase the number of multiples must be filed with the employing office on the Life Insurance Election form no more than 60 days following the date of the event which permits the increase. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit may not exceed the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may add upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired in the event which permits the employee to increase multiples.

* * * * *

[FR Doc. 86-13315 Filed 6-12-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-321]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Pink Bollworm quarantine and regulations by redesignating Caddo Parish in Louisiana from a generally infested area to a suppressive area. This action is necessary as an emergency measure to impose certain restrictions on the interstate movement of regulated articles in order to prevent the artificial movement of the pink bollworm into noninfested areas, and to prevent the reinfestation of suppressive areas where the pink bollworm no longer exists.

DATES: Effective date of this interim rule June 13, 1986. Written comments concerning this interim rule must be received on or before August 12, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-321. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the most destructive and widespread insect pests of cotton in the world. This insect spread to the United States from Mexico in 1917 and now occurs throughout most of the cotton-producing States west of the Mississippi River.

The Pink Bollworm quarantine and regulations (referred to below as regulations; 7 CFR 301.52 through 301.52-10) quarantine the States of Arizona, Arkansas, California, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, and Texas because of the pink bollworm. The regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the artificial spread of the pink bollworm.

The regulations provide for an area to be designated as a "regulated area" if it is an area in which the pink bollworm has been found, or in which there is reason to believe that the pink bollworm is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either "suppressive areas" or "generally infested areas." Suppressive areas are regulated areas in which eradication of the pink bollworm is undertaken as an objective. Generally infested areas are all regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the pink bollworm into noninfested areas, and to prevent the reinfestation of suppressive areas where the pink bollworm no longer exists.

A document published in the Federal Register on March 25, 1986 (51 FR 10183-10185), amended the regulations, among other things, by redesignating Caddo Parish in Louisiana from a suppressive area to a generally infested area.

The document of March 25 provided the following as the basis for changing the status of Caddo Parish:

> Prior to the effective date of this document, all of Caddo Parish in Louisiana was designated as a suppressive area. This document redesignates all of Caddo Parish as a generally infested area. Surveys conducted by the United States Department of Agriculture and a State agency of Louisiana establish that pink bollworm still exists in Caddo Parish. However, eradication of pink bollworm is no longer undertaken as an objective.

Changing the status of Caddo Parish was the result of an administrative error. It is necessary to designate Caddo Parish as a suppressive area rather than a generally infested area because, contrary to the information quoted above, eradication of pink bollworm *is* undertaken as an objective in Caddo Parish.

Accordingly, this document redesignates Caddo Parish as a suppressive area.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Because of the possibility that the pink bollworm could spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information

compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of less than $85,000; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from Caddo Parish in Louisiana. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that approximately 15 small entities move such articles interstate from Caddo Parish in Louisiana. Further, the overall economic impact from this action is estimated to be less than $85,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plants pests, Plant (Agriculture), Quarantine, Transportation, Pink Bollworm.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, the Pink Bollworm quarantine and regulations (contained in 7 CFR 301.52 *et seq.*) is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.52–2a is amended by revising the list of regulated areas in the State of Louisiana to read as follows:

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

* * * * *

Louisiana

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Caddo Parish. The entire parish.

* * * * *

Done at Washington, DC, this 9th day of June, 1986.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–13367 Filed 6–12–86; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 86–306]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of suppressive areas under the witchweed quarantine and regulations by adding areas in North Carolina and South Carolina to the list of suppressive areas. This document also amends the list of suppressive areas by deleting areas in North Carolina and South Carolina. In addition, this document makes certain other nonsubstantive, editorial changes. This action is necessary as an emergency measure in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Effective date of this interim rule June 13, 1986. Written comments concerning this interim rule must be received on or before August 12, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86–306. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant which causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina. The Witchweed Quarantine and Regulations (7 CFR 301.80 through 301.80–10) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of witchweed is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the artificial movement of witchweed to noninfested areas and to prevent the reinfestation of suppressive areas where the witchweed no longer occurs.

Designation of Areas as Suppressive Areas

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of areas previously designated as suppressive area. Therefore, as an emergency measure, the following areas in Columbus, Cumberland, Duplin, Greene, Lenoir, Scotland, and Wayne Counties in North Carolina and Florence and Marlboro Counties in South Carolina which were previously nonregulated areas are designated as witchweed suppressive areas. These additional areas are areas where eradication of witchweed is undertaken as an objective. This action is necessary in order to prevent the spread of witchweed and to facilitate its ultimate eradication. The areas in North Carolina and South Carolina that are being

designated as suppressive areas by this action are described as follows:

North Carolina

Columbus County. That part of the county lying north and west of a line that begins at a point where State Secondary Road 1730 and State Secondary Road 1708 meet at the Columbus-Bladen County line; then south and southwest along State Secondary Road 1730 to its junction with State Secondary Road 1001; then south along said road to a point where it is intersected by State Secondary Road 1714; then west along said road to its junction with U.S. Highway 74; then west along said highway to U.S. Highway 701 Bypass; then south and west along said highway to its intersection with State Secondary Road 1314; then west along said road to its junction with State Secondary Road 1346; then southwest along said road to its junction with the North Carolina-South Carolina State border where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of said road with State Highway 87.

The Campbell, James W., farm located on the northeast side of State Secondary Road 1726 immediately northwest of the junction of State Secondary Road 1713 with said road and in the southwest corner of said junction.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 mile northeast of the junction of said road with State Secondary Road 1001.

The Moore, Alfred, farm located on the north side of State Secondary Road 1726 and 1.0 mile east of the junction of said road with State Secondary Road 1724.

The Spaulding, Lloyd, farm located on the southeast side of State Secondary Road 1713 and 0.2 mile northeast of the junction of said road with State Secondary Road 1727.

Cumberland County. The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and .3 mile south of its junction with State Secondary Road 1802.

Duplin County. The Grand, Pietro, farm located 0.2 miles southwest at end of State Secondary Road 1981.

Greene County. The Alexander, Jenny, farm located on the west side of State Secondary Road 1419 and 0.3 mile south of its junction with State Highway 903.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Nethercutt, Lawrence, farm located on the north and south sides of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Wilson, Paul, farm located on the south side of State Secondary Road 1418 and 1.0 mile east of its junction with State Secondary Road 1400.

Lenoir County. The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 miles east of its junction with State Highway 55.

Scotland County. The Cole, Hattie Mae, farm located on the northwest side of State Secondary Road 1412 and 0.5 mile northwest of the intersection of said road and State Secondary Road 1332.

The Cooley, Calvin, farm located on the northwest side of State Secondary Road 1412 and 1.0 mile southwest of the intersection of said road and State Secondary Road 1332.

The Jackson, Coy, farm located on the left side of U.S. Highway 501 and 0.3 mile south of the Scotland-Hoke County line on U.S. Highway 501.

The James, M.P., farm located on the southeast side of State Secondary Road 1612 where State Secondary Road 1619 intersects with said road.

The McNeill, John H., farm located on the southwest side of State Secondary Road 1332 and 0.5 mile northwest of its junction with State Secondary Road 1400.

The McQueen, Clifton, farm located on the northwest of side of State Secondary Road 1412 and 1.0 mile southwest of the intersection of said road and State Secondary Road 1332.

The Rowell, J.T., farm located on the east side of State Secondary Road 1400 and 1.0 mile north of its junction with State Secondary Road 1412.

The Wilks, James L., farm located on both sides of State Secondary Road 1400, 0.6 mile east of its junction with Highway 15–501.

Wayne County. The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of intersection of said road and State Secondary Road 1915.

The Broadhurst, W.G., Est., located 0.4 miles east of Indian Springs on the north side of State Secondary Road 1744.

The Creech, Walter, farm located on the north side of State Secondary Road 1744, 0.7 miles east of the intersection of said road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 miles south of junction of said road and State Secondary Road 1120.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 miles south of junction of said road and State Secondary Road 1914.

The Grady, Annie, farm located on west side of State Secondary Road 1915, 0.1 mile south of junction of said road and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 miles north of junction of said road and State Secondary Road 1914.

The Greenfield, Henry, farm located 4.1 miles east of the Dudley city limits, on the south side of State Secondary Road 1120.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 miles east of junction of said road and State Secondary Road 1915.

The Greenfield, Williams, No. 1, farm located 4 miles west of Seven Springs on State Secondary Road 1744; 0.2 miles west of junction of said road and State Secondary Road 1913.

The Ham, Thedy, Est., farm located on the west side of State Secondary Road 1913, 0.5 miles south of junction of said road and State Highway 111.

The Lofton, Charles R., farm located on the north side of State Secondary Road 1744, 0.2 miles east of Indian Springs.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 miles east of junction of said road and State Secondary Road 1915.

The Sherrill, Robert G., farm located 9.1 miles southeast of Goldsboro on the east side of State Secondary Road 1915, 0.1 miles south of junction of said road and State Secondary Road 1120.

South Carolina

Florence County. The Bartel, D.L., farm located at the west end of a farm road and 0.35 mile from the junction of said farm road with State Secondary Road 1329, said junction being 0.55 mile north of the junction of said highway 1329 with South Carolina Highway 51 and U.S. Highway 378.

The Moore, Samuel, farm located on the north side of State Secondary Road 893 and 1.05 miles west of the junction of said road 893 with State Secondary Road 57, said junction being 2.2 miles north of the junction of said road 57 with State Secondary Road 40.

The Munn, F.M., farm located on the southeast side of the intersection of

State Secondary Road 24 with Jefferies Creek, said intersection being 1.3 miles northeast of the junction of said road 24 with State Secondary Road 57.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of the junction of said road 791 with State Secondary Road 732, said junction being 1.7 miles northeast of the junction of said road 732 with State Highway 51.

The Poston, A.D., farm located on the south side of the intersection of Big Swamp with U.S. Highway 378, said intersection being 1.0 mile northwest of the junction of said highway 378 with State Highway 51.

The Poston, Bussy, farm located on the west side of State Secondary Road 34 and 2.9 miles south of the junction of said road 34 with State Secondary Road 360, said junction being 0.5 mile southeast of the intersection of said road 34 with State Secondary Road 46.

Marlboro County. The Berry, Wilbur, farm located on both sides of State Secondary Road 625 and .037 mile south of its intersection with State Secondary Road 624, said intersection being 0.6 mile southwest of the junction of said road 624 with State Highway 38.

The Brigman, Ansel, farm located on the southwest side of State Highway 38 and 0.7 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Clark, Dewey, farm located on the southwest side of State Highway 38 and 0.65 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leatherman, Sr., Hugh K., farm located on the southwest side of the State Highway 38 and 0.6 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leatherman, Sr., Hugh K., farm located on the southwest side of State Highway 38 and 0.77 miles southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leggette, J.W., farm located on both sides of a dirt road and 0.95 mile south of the junction of said dirt road with State Highway 83, said junction being 0.2 mile east of the junction of said highway 83 with State Secondary Road 27.

The McCallum, Roy, farm located at the end of a dirt road and 1.0 mile south of the junction of said dirt road with State Highway 83, said junction being 0.2 mile east of the junction of said highway 83 with State Secondary Road 27.

The Stubbs, Mary, farm located on the north side of a dirt road and 0.1 mile northwest of a junction of said dirt road with State Secondary Road 190, said junction being 0.5 mile northwest of said road 190 with State Secondary Road 94.

Deletion of Areas from List of Regulated Areas

In addition to designating certain areas that were previously nonregulated as suppressive areas, this action deletes certain areas in North Carolina and South Carolina from the list of suppressive areas. This action has been taken because it has been determined that the witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, as an emergency measure, this document deletes Onslow County in North Carolina, and the following parts of the counties of Beaufort, Craven, Cumberland, Duplin, Greene, Hoke, Lenoir, Pender, Pitt, Richmond, Scotland, and Wayne in North Carolina, and deletes Darlington County in South Carolina, and the following parts of the counties of Florence and Marlboro in South Carolina from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles:

North Carolina

Beaufort County. The Jefferson, Russell M., farm located on the southwest side of State Secondary Road 1609 and 0.6 mile southeast of the junction of said road and State Highway 32.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road 1459 and 0.3 mile off west side of State Secondary Road 1459.

The Hawkins, Annie A., farm located on both sides of State Secondary Road 1263 and 1 mile east of the junction of said road 1263 with State Secondary Road 1262.

The Nobles, Jr., Jack, farm located on both sides of State Secondary Road 1262 and located 0.7 mile south of the junction of State Secondary Road 1258 and State Secondary Road 1262.

Cumberland County. The Lambert, Jack, farm located on the west side of State Secondary Road 1716 and 0.2 mile north of its junction with State Secondary Road 1717.

The Lovick, Grady, farm located on the west side of State Secondary Road 1716 and 0.2 mile north of its junction with State Secondary Road 1717.

The Matthews, E.M., farm located on the east side of State Secondary Road 1005 and at its north intersection with State Secondary Road 1813.

The McLaurin, W.A., farm located on the south side of State Secondary Road 1722 and 0.43 mile west of its junction with U.S. Highway 301.

The McNeill, Mattie J., farm located on the west side of State Secondary Road 1593 and 0.8 mile north of its junction with U.S. Highway 401.

The Melvin, Edith, farm located on the east side of State Secondary Road 1600 and 1.7 miles north of its intersection with State Secondary Road 1615.

The Odums, Marshal, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its junction with U.S. Highway 301.

The Smith, J.B., farm located on the south side of State Secondary Road 1722 and 0.6 mile west of its junction with State Secondary Road 1721.

The Thompson, Mrs. Paul, farm located on the west side of U.S. Highway 301 and 0.4 mile south of its junction with State Secondary Road 1863.

The Williams, M.C., farm located on the south side of State Secondary Road 1728 and at its east intersection with State Secondary Road 1725.

The Williams, Robert, farm located on the east side of State Secondary Road 1813 and at its intersection with Interstate 95.

Duplin Country. The Beard, Mary Lou, farm located on both sides of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Boykins, Charles B., farm located 1 mile northwest of State Secondary Road 1304 and 0.3 mile southeast of the junction of said road with State Secondary Road 1354.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1980.

The Carlton, Rivers, farm located 1 mile south of State Secondary Road 1307 and 1.5 miles east of the junction of said road with State Secondary Road 1352.

The Chambers, D.F., farm located on the south side of State Secondary Road 1700 and 0.6 mile west of its intersection with the Northeast Cape Fear River.

The Frederick, William, farm located on the north side of State Secondary Road 1114 and 0.1 mile west of the intersection of said road with State Secondary Road 1107.

The Grady, E.C., farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The King, W.R., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Monk, E.D., farm located 0.2 mile east of State Secondary Road 1923 and 0.5 mile north of the junction of said road with State Secondary Road 1922.

The Raiford, P.B., farm located on the west side of State Secondary Road 1900 and 0.1 mile south of the junction of said road with State Secondary Road 1903.

The Stokes, William C., farm located at the southwest end of State Secondary Road 1980.

The Williams, Jasper, farm located on the east side of State Secondary Road 1323 and 0.2 mile south of its junction with State Highway 403.

The Williams, McArthur, farm located on the south side of State Secondary Road 1961 and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1 mile south of the intersection of said highway and State Secondary Road 1700.

Greene County. That area bounded by a line beginning at a point where State Highway 903 intersects State Highway 123 and extending southerly along State Highway 123 to its intersection with Contentnea Creek, then northwest along said creek to its junction with Panther Swamp, then northerly along said swamp to its intersection with U.S. Highway 258–13, then northeasterly to its intersection with State Highway 903; then easterly along said highway to the point of beginning.

Hoke County. The Bronson, Amos, farm located on the north side of State Secondary Road 1302 and 0.8 mile west of the junction of said road with State Secondary Road 1303.

The Burke, Will, Estate farm located to the southeast of State Secondary Road 1233 and 0.2 mile south of the junction of said road with State Secondary Road 1218.

The Cameron, Hermon, farm located on the east side of State Secondary Road 1212 and 0.1 mile south of the junction of said road with State Secondary Road 1211.

The Flowers, Effie Lee, farm located on the north side of State Secondary Road 1203 and 0.1 mile northeast of the junction of said road with State Secondary Road 1207.

The Flynn, Charlie, farm located on the east side of State Secondary Road 1218 and 1 mile south of junction of said road with State Secondary Road 1219.

The Graham, William, farm located on the north side of State Secondary Road 1316 and 0.5 mile east of the junction of said road with State Highway 211.

The Leslie, Dora N., farm located north of the junction of State Secondary Roads 1200 and 1203.

The McPhatter, Tom, farm located on the east side of State Secondary Road 1202 and 0.1 mile south of the junction of said road with State Secondary Road 1203.

The McRae, Annie, farm located on the west side of State Secondary Road 1302 and 0.1 mile north of the junction of said road with U.S. Highway 401 bypass.

The Moon, Leonard, farm located on the west side of State Highway 211 and 0.3 mile north of the junction of said Highway with State Secondary Road 1228.

The Ray, Howard, farm located on the north side of State Secondary Road 1203 and 0.1 mile west of the junction of said road with State Secondary Road 1240.

The Ray, Neil, farm located on the west side of State Secondary Road 1320 and 0.1 mile west of the junction of said road with State Secondary Road 1304.

The Williams, Alex, farm located in the southeast junction of State Secondary Roads 1202 and 1203.

The Winecroff, Lee, farm located on both sides of State Secondary Road 1215 and 0.4 mile east of the junction of said road with State Secondary Road 1216.

Lenoir County. The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with State Secondary Road 1311.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Walters, H.F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

Onslow County. The Henderson, Charlie, farm located on the east side of State Secondary Road 1528, and 0.2 mile north of the junction of said road with State Secondary Road 1518.

The Lanier, Marion, farm located on the southeast side of State Secondary Road 1224, and 0.7 mile northeast from the junction of said road and State Secondary Road 1222.

Pender County. The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

Pitt County. The Couch, Ruth, farm located on the east side of State Secondary Road 1918 and 0.3 mile north of its junction with State Secondary Road 1917.

The Gardner, Charlie D., farm located on both sides of State Secondary Road 1910 at junction of said road and State Highway 118.

The Garris, Bruce E., farm located in the south junction of State Highway 118 and State Secondary Road 1916.

The Hodges, M.B., farm located on the east side of State Secondary Road 1907 and 1.1 miles north of State Highway 118.

The Stancill, Wiley, farm located on the west side of State Secondary Road 1918 and 0.1 mile south of its junction with State Secondary Road 1919.

Richmond County. The Autry, John, farm located on the north side of State Secondary Road 1803 and 0.4 mile east of Osborne.

The Dumas, Reba, farm located on the northeast side of State Secondary Road 1083 and 0.3 mile northwest of said intersection of State Highway 38.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Hoke-Scotland County line; then southwest along said highway to its junction with the Laurinburg city limits; then southwest along the Laurinburg city limits to its junction with U.S. Highway 501, then northerly on U.S. Highway 501 to its intersection with Hoke-Scotland County line; then southeasterly along said county line to the point of beginning.

The Creed, George O., farm located on both sides of State Secondary Road 1426 and 0.6 mile north of its junction with State Secondary Road 1427.

The Gibson, J.C., farm located on the south side of State Secondary Road 1341 and 0.5 mile southwest of its junction with State Secondary Road 1328.

The Jones, R.D., farm located on the northeast side of State Secondary Road 1601 and 0.2 mile northwest of its junction with State Secondary Road 1609.

The Morgan, J.D., farm located on the east side of State Secondary Road 1346

and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Stewart, Claude, farm located on the northwest side of State Secondary Road 1612 and 0.7 mile northeast of the junction of said road with State Secondary Road 1619.

Wayne County. That area bounded by a line beginning at a point where State Highway 111 and State Secondary Road 1913 junction; then southwesterly along State Secondary Road 1913 to its junction with State Secondary Road 1744; then easterly along said road to its junction with State Secondary Road 1948; then southerly along said road to its intersection with State Secondary Road 1745; then westerly along said road to its junction with State Secondary Road 1915; then northerly along said road to its intersection with State Secondary Road 1744; then westerly along said road to its junction with State Secondary Road 1933; then northwesterly along said road to its junction with State Secondary Road 1120; then easterly along said road to its junction with State Secondary Road 1915; then easterly from said junction along an imaginary line to the junction of Sleepy Creek and the Neuse River; then easterly along said river to its intersection with State Highway 111; then southerly along said highway to the point of beginning.

The Brooks, Leonard, farm located 0.2 mile west of State Secondary Road 1934 and 1 mile south of the junction of said road and State Secondary Road 1932.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1120.

The Dawson, L.A., farm located on the west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Grady, Zeb, farm located on the east side of State Secondary Road 1932 and 1 mile north of the junction of said road and State Secondary Road 1744.

The Grant, Charlie, farm located on the south side of State Secondary Road 1745 and 0.4 mile west of its junction with State Secondary Road 1952.

The Herring, Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Hines, Lucy, farm located on the west side of State Secondary Road 1933 and 1.5 miles south of the junction of said road and State Secondary Road 1120.

The Hines, Viola, farm located on the southwest side of State Secondary Road 1932 and 0.8 miles northwest of the intersection of said road and State Secondary Road 1744.

The Ivey, W.H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Jackson, Major, farm located on the east side of State Secondary Road 1731 and 0.6 mile north of the Neuse River.

The Jones, Mary, farm located on both sides of State Secondary Road 1730 and its junction with State Secondary Road 1731.

The Lane, Alfred, farm located on the south side of State Secondary Road 1730 and 0.4 mile east of its junction with State Highway 111.

The Lewis, Ben H., farm located on the northeast corner of the intersection of State Secondary Roads 1744 and 1932.

The Ray, Cora Pate, farm located on both sides of State Secondary Road 1730 and 0.8 mile west of its junction of State Secondary Road 1731.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, W.H., farm located on the east side of State Secondary Road 1932 and 1.5 miles southeast of intersection of said road and State Secondary Road 1744.

The Talton, Lillian D., farm located on the south side of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Whitfield, Herman, farm located at the end of State Secondary Road 1729.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

South Carolina

Darlington County. The Atkinson Farms located on both sides of State Secondary Highway 173, and 0.5 mile west of its intersection with State Secondary Highway 35.

The Flowers, William M., farm located on the north side of State Secondary Highway 14 and 1.4 miles east of its intersection with State Secondary Highway 13.

The Green, M.L., farm located on the east side of State Secondary Highway 133 and 0.75 mile north of junction of said highway 133 with State Secondary Highway 29.

The Johnson, William, farm located on the north side of a dirt road and 0.6 mile northwest of its junction with State Secondary Highway 133, junction being 2 miles south of the intersection of said highway and State Secondary Highway 41.

Florence County. That area bounded by a line beginning at a point where State Secondary Highway 925 and State Secondary Highway 24 junction and extending east and southeast along State Secondary Highway 24 to its junction with State Secondary Highway 13, then along a line projected due east from said junction to its intersection with the Great Pee Dee River, then south along said river to its junction with Barfield's Old Mill Creek, then northwest along said creek to its intersection with State Secondary Highway 57, then north along said highway to its junction with State Secondary Highway 893, then west and southwest along State Secondary Highway 893 to its junction with State Secondary Highway 70, then northwest along said highway to its junction with State Secondary Highway 897, then southwest and south along said highway to its junction with State Primary Highway 51, then west and northwest along said highway to its intersection with State Primary Highway 327, then northwest and west along said highway to its junction with State Secondary Highway 552, then north along said highway to its junction with State Secondary Highway 551, then northwest along a dirt road to its junction with second dirt road, said junction being 0.1 mile east of Goodland School, then northeast along said dirt road to its junction with State Secondary Highway 57, then southeast along said highway to its intersection with the Seaboard Coast Line Railroad, then northwest along said railroad to its intersection with State Secondary Highway 13, then east along said highway to its junction with State Secondary Highway 918, then north and northeast along said highway to its junction with State Primary Highway 327, then north along said highway to its intersection with U.S. Highway 76, then west along said highway to its junction with State Secondary Highway 925, then north along said highway to the point of beginning, excluding the area within the unincorporated limits of the town of Hyman.

That area bounded by a line beginning at a point where State Secondary Highway 794 and State Secondary Highway 72 junction and extending south along State Secondary Highway 72 to its intersection with State Secondary Highway 46, then northeast along said highway to its intersection with State Secondary Highway 34, then southeast along said highway to its

junction with State Secondary Highway 360, then northeast along said highway to its junction with a dirt road, said junction being 1.6 miles northeast of the junction of State Secondary Highways 34 and 360, then southeast along said dirt road for a distance of 1.2 miles to its junction with a second dirt road, then southwest along said dirt road to its junction with State Secondary Highway 34, then south along said highway to its junction with U.S. Highway 378, then west along said highway to its junction with State Secondary Highway 47, then northwest and west along said highway to the corporate limits of the town of Scranton, then north and west along the east and north perimeter of said corporate limits to its intersection with the Seaboard Coast Line Railroad, then north along said railroad to the corporate limits of the town of Coward, then north along the east perimeter of the town of Coward to its intersection with State Secondary Highway 794, then northeast along said highway to the point of the beginning.

Marlboro County. That portion of the county lying south and east of U.S. Highway 15, excluding the area within the corporate limits of the towns of Bennettsville, McColl, and Tatum.

The Bowman, Cecil, farm located on both sides of a dirt road and 0.5 mile northeast of junction of said dirt road and State Secondary Highway 257, said junction being 0.4 mile north of junction of said highway and State Secondary Highway 165.

As a result of this action, the only areas presently regulated as suppressive areas in North Carolina and South Carolina are those areas listed in this document in § 301.80–2a as suppressive areas.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action. Because of the possibility that the witchweed could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of approximately $100; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that approximately 290,000 small entities move regulated articles interstate from the specified areas in North Carolina and South Carolina, and many hundreds of thousands of small entities that move such articles interstate from nonregulated areas in the United States. However, it has been determined that only 10 small entities in North Carolina and South Carolina move regulated articles interstate from the areas that will be affected by this action. Further, the overall economic impact from this action is estimated to be approximately $100.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V)

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural Commodities, Plant Pests, Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, the Witchweed quarantine and regulations (contained in 7 CFR 301.80 et seq.) are amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80-2a is revised to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Beaufort County. The Osborne, H.R., farm located on both sides of State Secondary Road 1609 and 0.5 mile southeast of the juction of said road and State Highway 32.

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where U.S. Highway 701 intersects the Bladen-Columbus County line; then south along said road to its junction with U.S. 701 Bypass; then south along U.S. 701 Bypass of its junction with U.S. 701 at south Whiteville; then south and west along U.S. Highway 701 to its intersection with State Secondary Road 1314; then west along said road to its junction with State Secondary Road 1346; then southwest along said road to its ,unction with the North Carolina-South Carolina State border where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of said road with State Highway 87.

The Campbell, James W., farm located on the northeast side of State Secondary Road 1726 immediately northwest of the junction of

State Secondary Road 1713 with said road and in the southwest corner of said junction.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 miles northeast of the junction of said road with State Secondary Road 1001.

The Moore, Alfred, farm located on the north side of State Secondary Road 1726 and 1.0 mile east of the junction of said road with State Secondary Road 1724.

The Spaulding, Lloyd, farm located on the southeat side of State Secondary Road 1713 and 0.2 mile northeast of the junction of said road with State Secondary Road 1727.

Craven County. The Bellamy, Willie, farm located on the north side of State Secondary Road 1444 and 0.9 mile southwest of its junction with State Secondary Road 1440.

The Jolley, Albert, farm located on the south side of State Highway 55 and 0.3 mile west of its junction with State Secondary Road 1258.

The Jones, Vann, farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road and 0.4 mile off of west side of State Secondary Road 1459.

The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of the junction of State Secondary Road 1447 with said road.

The Nelson Estate, Joseph, located on both sides of State Secondary Road 1450 and located 0.1 mile northest of intersection of State Secondary Road 1454.

The Register, Keith, farm located 0.3 mile west of the junction of State Secondary Road 1251 with Highway 55 and on the north side of Highway 55.

The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along said highway to its intersection with the Fayetteville city limits, then south, east, and northeast along said city limits to its junction with U.S. Highway 301 north, then northeast along said highway to its junction with U.S. Interstate 95, then northeast along said interstate to its junction with U.S. Highway 13, then east and northeast along said highway to its intersection with the Cumberland-Sampson County line, then southerly along said county line to its junction with the Bladen-Cumberland County line, then westerly along said county line to its junction with the Cumberland-Robeson County line, then northwesterly along said county line to its junction with the Cumberland-Hoke County line, then northwesterly along said county line to the point of beginning.

The Autry, J.C., farm located on the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The Barefoot, William, farm located on the east side of State Secondary Road 1005 and 1.1 miles northeast of its junction with State Secondary Road 1813.

The Bullock, Burline, farm located on the northeast side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The Bunce, Mrs. John, farm located on the north side of State Secondary Road 1814 and 0.3 mile west of its junction with State Secondary Road 1813.

The Contrell, C.T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W.H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection U.S. Highway 13.

The Grimble, A.I., farm located on the east side of State Secondary Road 1608 and 0.5 mile north of its junction with U.S. Highway 401.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lee, Jack, farm located on the west side of State Secondary Road 1716 and 0.1 mile north of its junction with State Secondary Road 1717.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and .3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, H.A., farm located on the south side of State Secondary Road 1722 and 0.41 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K.D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Turner, W.E., farm located on a private road off the east side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1722.

The Underwood, George, farm located on the south side of State Secondary Road 1730 and 0.5 mile east of its junction with State Secondary Road 1723.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Williams, C.D., farm located on the north side of State Secondary Road 1719 and 1.21 miles north of its intersection with State Secondary Road 1720.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

Duplin County. The Branch, Hall, farm located 0.3 mile northwest of State Highway

11 and 1 mile northeast of junction of said highway and State Secondary Road 1378.

The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dodson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of the junction of said road and State Highway 11.

The Faison, Moses, farm located 1.1 miles south of State Secondary Road 1307 and 1.5 miles east of the junction of said road with State Secondary Road 1352.

The Grand, Pietro, farm located 0.2 mile southwest of end of State Secondary Road 1961.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Hoover, Annie, farm located on the west side of U.S. Highway 117 and 0.2 mile north of the intersection of said highway with State Secondary Road 1909.

The Jones, H.A., No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with the Northeast Cape Fear River.

The Kornegay, Cecil, farm located on the northwest side of State Secondary Road 1308 and 1 mile southwest of its intersection with State Secondary Road 1500.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The McGowan, Henry C., Heirs, farm located 0.6 mile south of State Secondary Road 1700 and 0.7 mile east of its junction with State Highway 11.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Miller, Willie Mae, farm located on the south side of State Secondary Road 1961 and 1.1 miles west of the intersection of said road and State Secondary Road 1962.

The Monk, Johnny, farm located on the north side of State Secondary Road 1104 and 0.1 mile west of the junction of said road with State Secondary Road 1003.

The Moore, Macy J., farm located on the south side of State Secondary Road 1301 at the junction of said road with State Secondary Road 1353.

The Outlaw, Oliver, farm located on both sides of State Secondary Road 1300 and the east side of State Secondary Road 1301 where these roads intersect.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Pigford, P.H., farm located on the south side of State Secondary Road 1980 and 0.2 mile east of the dead end of said road.

The Quinn, Joseph, farm located on both sides of State Secondary Road 1128 and 1.8 miles west of the intersection of said road with State Secondary Road 1100.

The Stokes, Fred, farm located on the south side of State Secondary Road 1980 and 2.4 miles west of the junction of said road and State Secondary Road 1979.

The Stokes, J.D., Jr., farm located on both sides of State Secondary Road 1980 and 0.3 mile east of the dead end of said road.

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of said road with State Secondary Road 1728.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of intersection of said road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and on the east side of State Secondary Road 1737 at the intersection of said roads.

Greene County. The Alexander, Jenny, farm located on the west side of State Secondary Road 1419 and 0.3 mile south of its junction with State Highway 903.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Nethercutt, Lawrence, farm located on the north and south sides of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Wilson, Paul, farm located on the south side of State Secondary Road 1418 and 1.0 mile east of its junction with State Secondary Road 1400.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of said swamp, then south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, then south and southeast along said road to its junction with State Highway 27, then southeast along said highway to its junction with State Highway 24, then southeast along said highway to its junction with State Secondary Road 1111, then southwest along said road to its intersection with Harnett-Moore County line, then northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, then northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along said creek to its intersection with State Secondary Road 1117, then northeast, northwest and north along said road to its intersection with Anderson Creek, then southeast along said creek to its intersection with the State Highway 210, then northeast along said highway to its junction with State Secondary Road 2030, then southeast along said road to its junction with State Secondary Road 2031, then southwest along said road to its intersection with the Harnett-Cumberland County line, then southwest and west along said county line to the point of beginning.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Frizzelle, Roscoe, farm located on the south side of State Secondary Road 1141 and 0.3 mile east of the junction of said road with State Secondary Road 1139.

The Gilchrist, Leonard W., farm located on the southeast side of State Secondary Road 1111, 0.4 mile north of the junction of said road with State Secondary Road 1110.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of the junction of said road with State Secondary Road 1202.

The Pulley, Clarence E., farm located on the north side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Serina, David, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of the junction of said road with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of the junction of said road with State Secondary Road 1117.

The Womack, E. H., farm located on the east side of State Highway 27, and 1 mile north of the junction of said highway with State Highway 24.

Hoke County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects with Hoke-Scotland County line, then northeasterly along said highway to its junction with the Raeford city limits, then southeast and north along said city limits to its junction with Business Highway 401, then east and northeast along said highway to its junction with U.S. Highway 401, then easterly along said highway to its intersection with the Cumberland-Hoke County line, then southeast along said county line to its junction with the Hoke-Robeson County line, then southwest and west along said county line to its junction with the Hoke-Scotland County line, then northerly along said county line to the point of beginning.

The Fowler, Arne, farm located on the north side of State Secondary Road 1203 and 0.2 mile northeast of the junction of said road with State Secondary Road 1207.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and 0.3 mile east of the junction of said road with State Secondary Road 1218.

The McGregor, Gilbert, farm located on the south side of State Secondary Road 1219 and 0.4 mile east of the junction of said road with State Secondary Road 1218.

The McRae, Ervin, farm located on the north side of State Secondary Road 1302 and 1 mile west of the junction of said road with State Secondary Road 1303.

Johnston County. The McArthur, Margaret, farm located 1.4 miles north of State Secondary Road 1199 and 0.9 mile west of the junction of said road and State Secondary Road 1008.

Lenoir County. The Barwick, Charles H. and Evelyn Sutton, farm located on the north side of State Secondary Road 1324 and 0.1

mile east of its junction with State Secondary Road 1398.

The Braxton, Clyde, Estate located on both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road 1802 and State Highway 11.

The Carey, Jack, farm located on both sides of State Secondary Road 1906 and 1 mile east of its junction with U.S. Highway 285.

The Dawson, Wayne, farm located on State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Herring, Frances F., farm located on the west side of State Secondary Road 1310 and 0.6 mile south of its junction with State Secondary Road 1311.

The Herring, Jack A., farm located on both sides of State Secondary Road 1310 and 0.4 mile south of its junction with State Secondary Road 1311.

The Herring, Robert, farm located in the northwest junction of State Secondary Roads 1318 and 1316.

The Jarman, F.R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1318.

The Rouse, Forrest, farm located on the northeast side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of the junction of said road and State Secondary Road 1324.

The Sutton, Curtis, Estate located on the west side of State Secondary Road 1324 and 0.5 mile north of its junction with State Secondary Road 1309.

The Sutton, Hurvey, farm located on the west side of State Secondary Road 1330 and 0.2 mile south of its junction with State Secondary Road 1330

The Sutton, John W., farm located in the southwest junction of State Secondary Road 1332 and State Secondary Road 1330.

The Sutton, Nancy, farm located on the south side of State Secondary Road 1330 and 0.5 mile east of its junction with State Secondary Road 1331.

The Sutton, W. Edward, farm located on the east side of State Secondary Road 1333 and 0.4 mile south of State Secondary Road 1330.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 mile east of its junction with State Highway 55.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, then southeast along said river to its intersection with State Highway 210, then southwest along said highway to its junction with State Secondary Road 1103, then southeast along said road to its junction with State Secondary Road 1104, then southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with Walker Swamp, then northeast along said swamp to its junction with Pike Creek, then southeast along said creek to its junction with the Northeast Cape Fear River, then south along said river to its intersection with State Highway 210, then southwest along said highway to its junction with State Secondary Road 1518, then southeast along said road to its junction with State Secondary Road 1517, then westerly along said road to the point of beginning.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of the junction of said road and State Secondary Road 1107.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Corbett, W.M., farm located on both sides of State Secondary Road 1201 at its junction with State Secondary Road 11200.

The Dees, Betty B., farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Hutcheson, Katie, farm located on field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of said road and State Secondary Road 1104.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1108 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Ward, Mary Alice, farm located on a field road 0.9 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

Pitt County. The Cannon, James, farm located on the west side of State Secondary Road 1918 and 0.1 mile north of its junction with State Secondary Road 1917.

Richmond County. The Covington, Tally, farm located on private road 0.1 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Fisher, George, farm located on the north side of State Secondary Road 1827 and 0.1 mile southeast of its junction with State Secondary Road 1825.

The Jackson, James, farm located on private road 0.2 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Poe, William, farm located 0.6 mile on unnumbered road off State Route 1475 and 0.2 mile southeast of its junction with State Road 1486.

The Steele, Thomas, farm located on the northeast side of State Road 1442 and 0.4 mile southwest of its junction with State Road 1489.

The Terry, Elijah, farm located on the northwest side of State Secondary Road 1442 and 0.2 mile northwest of its junction with State Secondary Road 1477.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

Robeson County. The entire county.

Sampson County. The entire county.

Scotland County. The Carmichael, John, farm located on both sides of State Secondary Road 1612 and 0.2 mile southwest of its intersection with State Secondary Road 1611.

The Cole, Hattie Mae, farm located on the northwest side of State Secondary Road 1412 and 0.5 mile northwest of the intersection of said road and State Secondary Road 1332.

The Cooley, Calvin, farm located on the northwest side of State Secondary Road 1412 and 1.0 mile southwest of the intersection of said road and State Secondary Road 1332.

The Jackson, Coy, farm located on the left side of U.S. Highway 501 and 0.3 mile south of the Scotland-Hoke County line on U.S. Highway 501.

The James, M. P., farm located on the southeast side of State Secondary Road 1612 where State Secondary Road 1619 intersects with said road.

The McNeill, John H., farm located on the southwest side of State Secondary Road 1332 and 0.5 mile northwest of its junction with State Secondary Road 1400.

The McQueen, Clifton, farm located on the northwest side of State Secondary Road 1412 and 1.0 mile southwest of the intersection of said road and State Secondary Road 1332.

The Rowell, J. T., farm located on the east side of State Secondary Road 1400 and 1.0 mile north of its junction with State Secondary Road 1412.

The Wilks, James L., farm located on both sides of State Secondary Road 1400, 0.6 mile east of its junction with U.S. Highway 15-501.

Wayne County. The Barwick, Jack, farm located on the west side of State Secondary Road 1932 and 0.6 mile south of the junction of said road and State Secondary Road 1934.

The Bowden, B. J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of intersection of said road and State Secondary Road 1120.

The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of intersection of said road and State Secondary Road 1915.

The Broadhurst, W. G., estate, located 0.4 miles east of Indian Springs on the north side of State Secondary Road 1744.

The Creech, Walter, farm located on the north side of State Secondary Road 1744, 0.7 miles east of the intersection of said road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 miles south of junction of said road and State Secondary Road 1120.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of said road and State Highway 55.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 miles south of junction of said road and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of said road and State Secondary Road 1938.

The Grady, Annie, farm located on the west side of State Secondary Road 1915, 0.1 mile south of junction of said road and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 miles north of junction of said road and State Secondary Road 1914.

The Greenfield, Henry, farm located 4.1 miles east of the Dudley city limits, on the south side of State Secondary Road 1120.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 miles east of junction of said road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 miles west of junction of said road and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913, 0.5 miles south of junction of said road and State Highway 111.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Charles R., farm located on the north side of State Secondary Road 1744, 0.2 miles east of Indian Springs.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The McClenny, G. A., farm located on the south side of State Secondary Road 1007 and 0.1 mile west of the junction of said road with State Highway 581.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 miles east of junction of said road and State Secondary Road 1915.

The Price, Jessie W., farm located on the east side of State Secondary Road 1948 and 0.7 mile south of the junction of said road and State Secondary Road 1744.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Sherrill, Robert G., farm located 9.1 miles southeast of Goldsboro on the east side of State Secondary Road 1915, 0.1 mile south of junction of said road and State Secondary Road 1120.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of said road and State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Smith, M.G., farm located on the west side of State Secondary Road 1952 and 0.3 mile south of its junction with State Secondary Road 1745.

South Carolina

(1) *Generally infested area.* None.

(2) *Suppressive areas.*

Dilion County. The entire county.

Florence County. The Bartel, D.L., farm located at the west end of a farm road and 0.35 mile from the junction of said farm road with State Secondary Road 1329, said junction being 0.55 mile north of the junction of said State Secondary Road 1329 with South Carolina Highway 51 and U.S. Highway 378.

The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road, then south along said dirt road to its junction with another dirt road, then westerly along said dirt road to its junction with State Secondary Highway 34, said junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Moore, Samuel, farm located on the north side of State Secondary Road 893 and 1.05 miles west of the junction of said road 893 with State Secondary Road 57, said junction being 2.2 miles north of the junction of said road 57 with State Secondary Road 40.

The Munn, F.M., farm located on the southeast side of the intersection of State Secondary Road 24 with Jefferies Creek, said intersection being 1.3 miles northeast of the junction of said road 24 with State Secondary Road 57.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of the junction of said road 791 with State Secondary Road 732, said junction being 1.7 miles northeast of the junction of said road 732 with State Highway 51.

The Poston, A.D., farm located on the south side of the intersection of Big Swamp with U.S. Highway 378, said intersection being 1.0 mile northwest of the junction of said highway 378 with State Highway 51.

The Poston, Bussy, farm located on the west side of State Secondary Road 34 and 2.9 miles south of the junction of said road 34 with State Secondary Road 360, said junction being 0.5 mile southeast of the intersection of said road 34 with State Secondary Road 46.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along said highway to its intersection with State Secondary Highway 306, then west along said highway to its intersection with State Secondary Highway 142, then south along said highway to its junction with State Primary Highway 9, then northwest along said highway to its intersection with State Secondary Highway 59, then southwest and south along said highway to its junction with State Primary Highway 917, then southwest along said highway to its intersection with State Secondary Highway 19, then south and southeast along said highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along said highway to its intersection with State Primary Highway 9, then southeast and south along said highway to its intersection with the Waccamaw River, then northeast along said river to its intersection with South Carolina-North Carolina State line, then southeast along said State line to its intersection with U.S. Highway 17, then southwest along said highway to its junction with State Primary Highway 90, then west along said highway to its intersection with a dirt road known as Telephone Road, said intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along said swamp to its junction with the Waccamaw River, then west along said river to its intersection with Stanley Creek, then north along said creek 1.6 miles, then northwest along said creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of said creek, and extending north to the junction of said line with State Primary Highway 905, then southwest along said highway to its junction with State Secondary Highway 19, then north along said highway 2.4 miles to its junction with a dirt road.

Then southwest along said road to its intersection with Maple Swamp, then north along said swamp to its intersection with State Secondary Highway 65, then southwest along said highway to its junction with U.S. Highway 701, then south along said highway to its intersection with U.S. Highway 501, then northwest along said highway to its intersection with State Secondary Highway 548, then west along said highway to its junction with a dirt road, then west along

said dirt road to its junction with State Secondary Highway 78, then north along said highway to its junction with State Secondary Highway 391, then northeast along said highway to its junction with U.S. Highway 501, then southeast along said highway to its junction with State Secondary Highway 591, then north along said highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along said dirt road to its junction with State Primary Highway 319, then northwest along said highway to its junction with State Secondary Highway 131, then east and north along said highway to its intersection with Loosing Swamp, then west and northwest along said swamp to its intersection with State Secondary Highway 45, then southwest along said highway to its junction with State Secondary Highway 129, then northwest along said highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection with Little Pee Dee River, then northwest along said river to its junction with the Lumber River, then northeast along said river to its intersection with the South Carolina-North Carolina State line, then southeast along said State line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of said dirt road and State Secondary Highway 99, said junction being 1.75 miles north of the junction of said highway and State Secondary Highway 97.

The Barnhill, Edgar, farm located on both sides of a dirt road and 0.4 mile east of its junction with State Primary Highway 90, said junction being 0.1 mile northeast of the junction of said highway and State Secondary Highway 377.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of said dirt road with rural paved road No. 109, said intersection being 2.25 miles northeast of the junction of said rural paved road No. 109 with rural paved road No. 79.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, said junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, said second junction being 0.8 mile southwest of the junction of said highway and State Secondary Highway 31.

The Gore, Sumpter, farm located on both sides of a dirt road and 0.75 mile north of the intersection of said dirt road and State Primary Highway 9, said intersection being at Gorelown.

The Hucks, Edd, farm located on the north side of a dirt road and 1 mile west of its junction with State Secondary Highway 108, said junction being 1.5 miles northeast of the junction of said highway and State Secondary Highway 79.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of said highway and State Secondary Highway 377.

The Page, Cordie, farm located on the north side of State Secondary Highway 128 and 0.4 mile west of the junction of said highway and U.S. Highway 501, said junction being at Aynor.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of the junction of said dirt road and State Secondary Highway 99, said junction being 1.75 miles north of the junction of said highway and State Secondary Highway 97.

The Williamson, Vide, farm located on both sides of a dirt road and 0.4 mile from the junction of said dirt road and State Primary Highway 410, said junction being 0.7 mile northeast of the intersection of State Primary Highway 410 and State Secondary Highway 19.

Marion County. The entire county.

Marlboro County. The Berry, Wilbur, farm located on both sides of State Secondary Road 625 and 0.37 mile south of its intersection with State Secondary Road 624, said intersection being 0.6 mile southwest of the junction of said road 624 with State Highway 38.

The Brigman, Ansel, farm located on the southwest side of State Highway 38 and 0.7 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Clark, Dewey, farm located on the southwest side of State Highway 38 and 0.65 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leatherman, Sr., Hugh K., farm located on the southwest side of State Highway 38 and 0.6 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leatherman, Sr., Hugh K., farm located on the southwest side of State Highway 38 and 0.77 mile southeast of the intersection of said highway 38 with State Highway 34, said intersection being 1.6 miles southwest of the intersection of said highway 34 with the Dillon County line.

The Leggette, J.W., farm located on both sides of a dirt road and 0.95 mile south of the junction of said dirt road with State Highway 83, said junction being 0.2 mile east of the junction of said highway 83 with State Secondary Road 27.

The McCallum, Roy, farm located at the end of a dirt road and 1.0 mile south of the junction of said dirt road with State Highway 83, said junction being 0.2 mile east of the junction of said highway 83 with State Secondary Road 27.

The Stubbs, Mary, farm located on the north side of a dirt road and 0.1 mile northwest of a junction of said road with State Secondary Road 190, said junction being 0.5 mile northwest of said road 190 with State Secondary Road 94.

Done at Washington, DC, this 10th day of June, 1986.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-13420 Filed 6-12-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Airways International, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Airways International, Inc.

EFFECTIVE DATE: June 3, 1986.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Airways International, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

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

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

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

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

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Airways International, Inc. under "at Freeport."

* * * * *

Dated: June 6, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-13405 Filed 6-12-86; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Gulf Air Transport, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Gulf Air Transport, Inc.

EFFECTIVE DATE: June 3, 1986.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Gulf Air Transport, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

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

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

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

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

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Gulf Air Transport, Inc. under "at Freeport."

* * * * *

Dated: June 6, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-13404 Filed 6-12-86; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Key Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Key Airlines, Inc.

EFFECTIVE DATE: June 3, 1986.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Key Airlines, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

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

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

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

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

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Key Airlines, Inc. under "at Freeport."

* * * * *

Dated: June 6, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-13401 Filed 6-12-86; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Piedmont Aviation, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their

passengers and crew at locations outside the United States by adding the name of Piedmont Aviation, Inc.

EFFECTIVE DATE: May 30, 1986.

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

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Piedmont Aviation, Inc. to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

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

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

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

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

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Piedmont Aviation, Inc. under "at Montreal" and "at Toronto".

* * * * *

Dated June 5, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-13400 Filed 6-12-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-23-AD; Amdt. 39-5331]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to all Boeing Model 727 airplanes, which requires repetitive visual inspections for cracks and repair, if necessary, of the aft pressure bulkhead (Body Station 1183) web and strap. This action is prompted by the development of a preventative modification that, if incorporated, will eliminate the potential for cracks occurring in the undamaged web and strap. This amendment removes the repetitive inspection requirement for airplanes that have incorporated the preventative modification. The amendment also requires that, within 15,000 landings after repair with the -1 repair kit, certain airplanes must be modified by incorporation of a reinforcing strap.

EFFECTIVE DATE: July 21, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION, CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 86-02-06, Amendment 39-5222 (51 FR 3027; January 23, 1986), to include a preventive modification that, if incorporated, would terminate the requirement for repetitive inspections of the aft pressure bulkhead web and strap, was published in the **Federal Register** on April 7, 1986 (51 FR 11748). The proposal also contained a requirement to modify certain airplanes within 15,000 landings after being repaired.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received; the commenter had no objections to the contents of the proposed rule.

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

It is estimated that 6 airplanes will require further modification as a result of this amendment, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,760. For the remaining operators of Model 727 airplanes, this amendment provides an optional modification which, if incorporated, relieves a repetitive inspection requirement.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By amending Airworthiness Directive (AD) 86-02-06, Amendment 39-5222 (51 FR 3027; January 23, 1986), by revising paragraphs D., E., and F. to read as follows:

D. Accomplish a close visual inspection of the web in accordance with Figure 1 of Boeing Alert Service Bulletin 727-53A0171.

Revision 1, dated January 17, 1986, or later FAA-approved revision. If any cracks are detected, repair prior to further flight in accordance with paragraph E. or F. of the Accomplishment Instructions of that service bulletin.

E. For airplanes repaired by the installation of the doubler, in accordance with Boeing Service Bulletin 727-53A0171, Original Issue, within the next 15,000 flight cycles after that repair, incorporate the vertical reinforcing strap and spacers described in paragraph F. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or later FAA-approved revisions.

F. The following constitutes terminating action for the repetitive inspections required by paragraphs A., B., and C. of this AD:

1. The preventive modification described in paragraph D. of the Accomplishment Instructions in Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or latter FAA-approved revision; or

2. The repairs described in paragraphs E. and F. of the Accomplishment Instructions in Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or later FAA-approved revision.

This amendment becomes effective July 21, 1986.

Issued in Seattle, Washington, on June 5, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13323 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ASW-14, Amdt. 39-5329]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the retirement life of the main rotor yoke assembly from 5,000 to 2,500 hours' time in service on certain Bell Helicopter Textron, Inc., Model 214ST helicopters. This AD is required to prevent potential failure of the yoke assembly which could result in loss of the helicopter.

EFFECTIVE DATE: July 1, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. T.K. Henry, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2595.

SUPPLEMENTARY INFORMATION: A study was conducted by the manufacturer to consider the structural effects imposed on the Bell Helicopter Textron, Inc., Model 214ST main rotor (M/R) yoke due to M/R flapping under high wind conditions when the helicopter was parked and the M/R blade unsecured. Tests showed a deterioration of residual compressive stresses allowing potential tensile stresses which could result in fatigue failure. As a result of this study, the manufacturer has issued Bell Alert Service Bulletin No. 214ST-86-34, dated February 26, 1986, which reduces the retirement life of the Model 214ST M/R yoke assembly from 5,000 to 2,500 hours' time in service. The FAA has carefully reviewed the manufacturer's analysis and test results and has determined that this reduction in retirement life of the Model 214ST M/R yoke assembly is necessary to assure the continued airworthiness of this aircraft. Failure of the yoke assembly would result in loss of the helicopter's main rotor.

Since this condition is likely to develop on other helicopters of the same type design, an airworthiness directive is being issued which reduces the retirement life of the M/R yoke assembly Part Number (P/N) 214-010-105-001 from 5,000 to 2,500 hours' time in service on Bell Helicopter Textron, Inc., Model 214ST helicopters S/N's 18401, 18402, 18403, and 28101 through 28159 certificated in any category.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to Bell Helicopter Textron, Inc., Model 214ST helicopters, S/N's 18401, 18402, 18403, and 28101 through 28159, certificated in any category, equipped with main rotor yoke assembly P/N 214-010-105-001.

Compliance is required as indicated, unless already accomplished.

(a) To prevent failure of the main rotor yoke assembly, remove and replace the yoke assembly not later than 2,500 hours' time in service. For yoke assemblies that have accumulated more than 2,450 hours' time in service as of the effective date of this AD, remove and replace the yoke assembly within the next 50 hours' time in service or by July 1, 1986, whichever comes first.

(b) Any alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective July 1, 1986.

Issued in Fort Worth, Texas, on June 2, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-13328 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-7-AD; Amdt. 39-5330]

Airworthiness Directive; Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec Model PZL M18 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec Model PZL M18 airplanes which requires inspection for cracks in the propeller pitch control system, the throttle control system, and the engine mounting frame struts. The FAA and the manufacturer have received reports of cracks developing in these parts which cause excessive vibration and the possible loss of engine operational control. The inspection and repair required by this AD will preclude loss of engine control.

DATES: *Effective Date:* July 19, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: Wytwornia Sprzetu Komunikacyjnego Mandatory Engineering Bulletin (MEB) No. K/02.070/84 dated, October, 1984, (Supplement to Mandatory Design Bulletin (MDB) No. K/02.060/83) MDB No. K/02.060/83, dated October, 1983, Mandatory Service Bulletin (MSB) No. E/02.064/84, dated April, 1984, and MDB No. K/02.067/84, dated July, 1984, applicable to this AD may be obtained from Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec, 39-301 Mielec, Poland or the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. J.P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (316) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD applicable to certain Wytwornia Sprzetu Komunikacyjnego PZL-Mielec model airplanes was published in the **Federal Register** on March 25, 1985 (50 FR 11706). It would require inspection for the presence of cracks, deformation or corrugation of the propeller pitch control system load carrying tube (Part Number (P/N) D65.250.00.2), the propeller pitch control system bracket (P/N D65.012.00.1), the throttle control system torque tube (P/N D65.210.00.1), or the factory original engine mounting frame struts. If defects are found, the proposal provided that the affected part must be replaced with a new serviceable part, or optionally in the case of the engine mount, replaced with an improved unit in accordance with applicable manufacturer's service bulletins. The proposal resulted from the FAA and the manufacturer having received reports of cracks developing in these parts which cause excessive vibration and the possible loss of engine operational control. MDB No. K/02.060/83 requires replacement of the engine mount with a new serviceable unit or with an improved engine mount (P/N D64.100.00.5), a change to Arens propeller pitch control (P/N D65.300.00.4), and throttle control cables (P/N D65.310.00.4) from the rigid torque tube system. MEB No. K/02.070/84 describes replacement of the P/N D65.300.00.4 and P/N D65.310.00.4 cables with common P/N 56-3632-0062 cables. This MEB may be accomplished independently of the cable replacement required in MDB No. K/02.060/83 and is an alternate to the control change required in MDB No. K/02.060/83 which provides flexibility to the operator. Inspection of the propeller pitch load tube, load tube bracket, and throttle torque tube are required by MSB No. E/02.064/84 until MDB No. K/02.060/83 or MEB No. K/02.070/84 is accomplished. Inspection of the engine mount is required by MSB No. E/02.064/84 until MDB No. K/02.060/83 is accomplished. MDB No. K/02.067/84 requires replacement of the rigid torque tube P/N D65.210.00.1 In the throttle control system with a part with ECN 4412, 4410 and 4432 incorporated.

The Polish Civil Aircraft Inspection Board (CACA), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Poland, classified MEB No. K/02.070/84, dated October, 1984, MDB No. K/02.060/83, dated October, 1983, MSB No. E/02.064/84, dated April, 1984, and MDB No. K/02.067/84, dated July, 1984, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Polish registration, this action has the same effect as an AD on airplanes certificated for operation in the United States.

The FAA relies upon the certification of the CACA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of MEB No. K/02.070/84, MDB No. K/02.060/83 and the mandatory classification of the CACA of MDB No. K/02.060/83 and concluded that the condition addressed by MDB No. K/02.060/83 was an unsafe condition that may exist on other airplanes of this type, certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject. Interested persons have been afforded an opportunity to comment on the proposal.

One commenter responded. The commenter recommended that the proposed rule be withdrawn. The basis for this position is summarized as follows:

The commenter is a domestic subsidiary of the manufacturer and claims direct control of all Wytwornia Sprzetu Komunikacyjnego (WSK) PZL-Mielec Model M18 airplanes certificated for import into the U.S., and as such, will assure that all factory bulletins are complied with.

It is the FAA's position that the commenter's relationship to the manufacturer is not relevant to the issue. It has been presumed by the commenter that he has control over all import aircraft. The FAA does not agree. Title 14 Part 39.3 of the CFR specifies "No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that directive." Once an unsafe condition has been identified and remedial action described in an AD, the operator then bears the responsibility for compliance.

The commenter also stated that all airplanes manufactured after S/N 1Z012-40 have been modifed in accordance with MDB No. K/02.060/83 by the factory and all existing aircraft on the U.S. Registry either have been, or are scheduled to be modified. Of the 53 aircraft on the U.S. registry, 38 airplanes have been modified as of May 31, 1985, and 15 airplanes have not yet been modified. Further, planned modification would occur before an AD could be issued.

The FAA acknowledges that at the present rate the registered U.S. aircraft will comply with the PZL Service Bulletins prior to issuance of an AD.

Compliance of the worldwide fleet with the PZL factory bulletins is conducted under regulation of Foreign

Certification Airworthiness Authorities (FCAA). Since many would be conducted under FCAAs with no U.S. bilateral agreement and unknown quality assurance and methods, the possibility exists that unmodified aircraft may be imported into the U.S. Further, control of removed parts must be maintained to prevent the replaced assemblies from entering the logistic base and their re-installation at a later time.

The commenter further stated that all operators and approved M18 service centers have been advised of, and have received, copies of MSB No. E/02.064/84, MDB No. K/02.060/83 and MDB. No. K/02.067/84. This, the commenter suggests, provides an immediate awareness of the problem similar to the eventual effect of an AD.

The FAA's position is that while notification and availability of service information is critical to application, there is no requirement that the service bulletin be applied. In addition, the parts removed from the aircraft are not controlled or destroyed. It is possible for these parts to be reinstalled on the PZL M18 airplane.

Finally the commenter stated that all M18 aircraft operating under other civil airworthiness authority are undergoing identical modifications as described in the paragraph above. Should any aircraft not modified be imported, the commenter proposes that he would have full knowledge and would insure compliance with the factory bulletins listed in the paragraph above.

The FAA has no assurance of this sequence occurring. The burden of compliance under the AD rests upon the operator, not the importer or the manufacturer's representative.

MEB No. K/02.070/84 was received on March 18, 1985, too late for inclusion in the publication of the NPRM. This bulletin offers an alternate means of compliance with the engine control portion of MDB No. K/02.060/83, which offers the operator more flexibility in compliance.

The AD therefore, is being adopted in conformance with the NPRM except for allowance of the MEB No. K/02.070/84 as an alternate means of compliance with paragraphs 6 and 7 of MDB No. K/02.060/83, and minor editorial changes.

The FAA has determined that this regulation involves 53 airplanes at an approximate cost of $420 for each airplane or a total fleet cost of $22,260.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 2 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Wytwornia Sprzetu Komunikacyjnego: Applies to Model(s) PZL M18 (S/Ns up to and including 1Z012-40) airplanes, certificated in any category.

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

To prevent loss of engine control, accomplish the following:

(a) Before the first flight of each day:

(1) Visually check the following parts for the absence of discernible deformation, corrugation and cracks in accordance with Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec Mandatory Service Bulletin (MSB) No. K/02.064/84, dated April, 1984:

(i) The propeller pitch control system load carrying tube, P/N D65.250.00.2 (see the above S/B Sketch No. 1, sheet 1).

(ii) The propeller pitch control system bracket, P/N D65.012.00.1 (see the above S/B Sketch No. 1, sheet 1).

(iii) The throttle control system torque tube, P/N D65.210.00.1 (see the above S/B Sketch No. 1, sheet 2).

(iv) the engine mounting frame struts (see the above S/B Sketch No. 2).

(2) If no cracks, deformations, or corrugations are found, record compliance with paragraph (a)(1) of this AD in the aircraft maintenance records in accordance with FAR 91.173.

(3) If any crack, deformation, or corrugation is found, replace the damaged part before the next flight as follows:

(i) The propeller pitch control tube with a new serviceable part, or accomplish (iv).

(ii) The propeller pitch control bracket with a new serviceable part, or accomplish (iv).

(iii) The throttle control torque tube with a new serviceable part or an improved part in accordance with Mandatory Design Bulletin (MDB) No. K/02.067/84, dated July, 1984 or accomplish (iv).

(iv) The torque tube system with either the D65.300.00.4 propeller pitch control cable installation and the D65.310.00.4 throttle control cable installation in accordance with MDB No. K/02.060/83 dated October, 1983, or alternatively replace both with the 56-3632-0062 cable installations in accordance with Mandatory Engineering Bulletin (MED) No. K/02.070/84.

(v) The engine frame struts with new serviceable units or with an improved engine mount P/N D64.100.00.5 in accordance with MBD No. K/02.060/83, dated October, 1983.

(b) The daily visual check required by paragraph (a)(1) of this AD may be performed by the holder of a pilot certificate issued under FAR Part 61 on any airplane which is not used for operations under FAR Part 121, 127, 129, or 135.

(c) Within 50 hours time-in-service (TIS) after the effective date of this AD and every 50 hours TIS thereafter:

(1) Visually inspect for cracks, using a 5X power (or greater) magnifying glass, the parts described in paragraphs (a)(1)(i) through (a)(1)(iv) of this AD in accordance with MSB E/02.064/84.

(2) If any crack is found, prior to the next flight accomplish the corrective action described in paragraph (a)(3) of this AD.

(d) The intervals between the repetitive 50 hours TIS Inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishment of these inspections concurrent with other scheduled maintenance of the airplane.

(e) Aircraft may be flown in accordance with FAR 21.197 to a location where paragraph (a)(3) and (c) of this can be accomplished.

(f) The daily and 50 hour TIS repetitive inspections specified by this AD are no longer required after MDB No. K/02.060/83, dated October, 1983, is accomplished. If MEB No. K/02.070/84 is accomplished prior to MDB No. K/02.060/83, the inspections specified by this AD on the propeller and throttle controls are no longer required. The engine frame inspection would still be required.

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

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Wytwornia Sprzetu Komunikacyjnego, PZL-Mielec, 39-301 Mielec Poland or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 19, 1986.

Issued in Kansas City, Missouri, on June 4, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-13331 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-CE-21-AD; Amdt. 39-5328]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., Type Certificate (TC) A2PC, Models MU-2B, -10, -15, -20, -25, -26, -30, -35, -36 Airplanes and Mitsibushi Aircraft International, Inc; TC A10SW, Models MU-2B-25, -26, -26A, -35, -36A, -40 and -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 85-04-03, Amendment 39-5006 (50 FR 8321) applicable to certain serial numbered Mitsubishi Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 airplanes manufactured by Mitsubishi Heavy Industries Ltd. (MHI), and Mitsubishi Aircraft International, Inc. (MAI) by providing an alternate temporary means of compliance. Subsequent to the issuance of AD 85-04-03, Mitsubishi Aircraft International, Inc., Beech Aircraft Corporation (Licensee for Mitsubishi) and the FAA received reports that a sufficient number of the higher heat producing capability pitot tubes would not be available, prior to the AD compliance date, effectively grounding the affected unmodified airplanes. This revision provides an alternate temporary means of compliance, relieving the operators of the burden to comply with the AD requirement to install the higher heat producing capacity pitot tubes and modify the pitot system prior to May 31, 1986.

EFFECTIVE DATE: June 10, 1986.

Compliance: As prescribed in the body of the AD

ADDRESSES: A copy of Mitsubishi Heavy Industries (MHI), Ltd., MU-2 Service Recommendation No. 053, dated January 19, 1979, or Mitsubishi Aircraft International (MAI), Inc., MU-2 Service Recommendation No. SR020/34-005, Revision A, dated July 31, 1979, applicable to this AD may be obtained from Beech Aircraft Corporation, 9709 East Central, Post Office Box 85, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For MHI TC A2PC series airplanes manufactured in Japan: Mr. Jerry Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1166. For MAI TC A10SW series airplanes manufactured in the U.S.: Mr. Robert Jackson, Systems and Equipment Engineer, Wichita Aircraft Certification Office, ACE-130W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4416.

SUPPLEMENTARY INFORMATION: AD 85-04-03, applicable to MHI, Ltd., Models MU-2B, -10, -15, -20, -25, -26, -30, -35 and -36 airplanes and MAI, Inc., Models MU-2B-25, -26, -26A, -35, -36A, -40 and -60 airplanes requires modifying the pitot systems and installing an improved pitot tube with a higher heat producing capacity including a mast heater. As a result of comments received on the Notice of Proposed Rulemaking (NPRM 49 FR 35128) regarding availability of pitot tubes, the compliance deadline date was extended 16 months to May 31, 1986.

Recently the FAA has been made aware that certain Mitsubishi MU-2 airplane owner/operators are unable to meet the AD compliance date because of the continued lack of available high heat producing capability pitot tubes. Since it is not the intention of the FAA to unnecessarily ground airplanes or place an undue burden on the public, the pertinent data has ben reviewed and an alternate temporary method of compliance has been formulated, which effectively extends the compliance deadline date for modifying the pitot systems with the higher heat producing capability pitot tubes until September 1, 1988. The alternate method is a temporary measure, permissible until September 1, 1988, to permit owner/operators to continue to operate the MU-2 airplane with an equivalent level of safety, by: (a) Prohibiting flight into known icing conditions, (b) requiring pitot heat for flight in visible moisture, and (c) making the pilot aware that the pilot and/or co-pilot airspeed indicators may display erroneous data after any: (a) Flight in visible moisture, (b) period of storage in rain without pitot covers or (c) washing of airplane without pitot covers. If an erroneous airspeed indication is observed in either system, prior to the next flight, the discrepant pitot line must be drained and an "OPERATIONAL CHECK OF PITOT LINE" must be performed in accordance with the applicable Mitsubishi MU-2 maintenance manual. Therefore, the FAA is revising AD 85-04-03 (Amendment 39-5006) by allowing an alternate temporary means of compliance, which provides an equivalent level of safety.

This revision imposes no additional burden on any person and maintains or increases an existing level of safety in the product involved. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this document involves an amendment that only adds an alternate temporary means of compliance providing an equivalent level of safety. It does not impose any additional burden on any persons. Therefore: (1) It is not a major rule under Executive Order 12291, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it does not increase the existing cost of accomplishing the AD, and because it involves few, if any, small entities.

List of Subjects in 14 CFR 39

Air Transportation, Aviation Safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By revising amendment 39-5006, AD85-04-03:

Mitsubishi: Applies to Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 (Serial Numbers 1 through 753 inclusive, with or without the SA suffix) airplanes certificated in any category.

Note.—The serial numbers of airplanes manufactured in the United States by MAI under Type Certificate A1OSW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by MHI under Type Certificate A2PC have no suffix.

Compliance: Required as indicated, unless already accomplished. To assure anti-ice capability of the pitot system, accomplish the following:

(a) Before further flight:

(1) Modify the pitot system of the affected model and serial numbered airplanes in accordance with the applicable service information as follows:

(i) Mitsubishi Heavy Industries Ltd., (MHI) Service Recommendation (S/R) No. 053, dated January 19, 1979, or

(ii) Mitsubishi Aircraft International, Inc. (MAI) S/R SR020/34-005, Revision A, dated July 31, 1979, or

(2) As an alternate means of compliance:

(i) Prior to September 1, 1988, modify the pitot system in accordance with paragraph (a)(1) of this AD, and

(ii) Before further flight:

(A) Fabricate and install a temporary placard(s) in full view of the pilot, using letters of minimum 0.10-inches in height which state:

(I) "FLIGHT IN KNOWN ICING CONDITIONS IS PROHIBITED"

(II) "TURN PITOT HEAT *ON* DURING FLIGHT IN VISIBLE MOISTURE"

(III) "Pilot and/or co-pilot airspeed indicators may display erroneous data after any: (a) Flight in visible moisture, (b) Outside storage in rain without pitot covers, or (C) Washing of airplane. Refer to AFM for corrective action." and

(B) On the "TYPES OF OPERATION" placard located in the cockpit delete, using opaque tape, the words "ICING CONDITIONS", and

(C) Add the following information to the "LIMITATIONS" section of the FAA Approved Airplane Flight Manual (AFM) which supersedes any other AFM information which may be contradictory:

(I) "Flight in known icing conditions is PROHIBITED", and

(II) "TURN PITOT HEAT *ON* DURING FLIGHT IN VISIBLE MOISTURE", and

(III) "The pilot and/or co-pilot airspeed indicator may display erroneous data after any:

(*a*) Flight in visible moisture, or

(*b*) Period of outside storage in rain with no pitot covers installed, or

(*c*) Washing of airplane with no pitot covers installed.

If erroneous airspeed indication(s) has (have) been observed, corrective action is required prior to next flight by draining the affected pitot line(s) and performing the "OPERATIONAL CHECK OF PITOT LINE" in accordance with the applicable Mitsubishi MU-2 maintenance manual."

(D) If erroneous airspeed indication(s) has (have) been observed, drain the affected pitot line(s) and perform the "OPERATIONAL CHECK OF PITOT LINE" in accordance with applicable Mitsubishi MU-2 maintenance manual.

(b) Insertion of a copy of this AD in the "LIMITATIONS" section of the AFM satisfies the requirements of paragraph (a)(2)(ii)(C) of this AD.

(c) The requirements of paragraphs (a)(2)(ii)(A), (a)(2)(ii)(B) and (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) Remove the temporary placard(s) and AFM textual addition required by paragraph (a)(2)(ii) of this AD when the requirement of paragraph (a)(1) of this AD is accomplished.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, and on the MAI airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this proposed AD may obtain copies of the documents referred to herein upon request to Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan, or Beech Aircraft Corporation (Licensee for Mitsubishi), 9709 East Central, Post Office Box 85, Wichita, Kansas 67201, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective June 12, 1986.

Issued in Kansas City, Missouri, on June 3, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-13394 Filed 6-10-86; 2:45 pm]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-2]

Alteration of Transition Area; Santa Maria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule revises the description of the Santa Maria, California, transition area, and increases the size of the 700 foot transition area. This will provide additional controlled airspace for aircraft executing an instrument approach procedure to the Santa Maria Public Airport, California, utilizing the Santa Maria, California, Very High Frequency Omni-directional Range (VOR).

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Santa Maria, California (51 FR 13526).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in the Handbook 7400.6B, dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the description of the Santa Maria, California, transition area. The 700 foot transition area is increased to provide controlled airspace for aircraft executing an instrument approach procedure to the Santa Maria Public Airport, California, utilizing the Santa Maria Very High Frequency Omni-directional Range (VOR) as a navigational aid.

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

List of Subjects in 14 CFR Part 71

Aviation safety/Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. § 71.181 is amended, as follows:

Santa Maria, CA—[REVISED]

That airspace extending upward from 700 foot above the surface beginning at lat. 34°45'00" N., long. 120°20' 10" W.; to lat. 34°49'20" N., long. 120°26'00" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.) to lat. 34°54'26" N., long. 120°32'30" W.; to lat. 34°54'04" N., long. 120°34'40" W., to lat. 35°03'40" N., long. 120°41'41" W.; to lat. 35°07'42" N., long. 120°33'20" W.; to lat. 34°58'12" N., long. 120°26'20" W; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); to lat. 34°53'20" N., long. 120°21'10" W.; to lat. 34°48'50" N., long. 120°15'50" W.; to the point of beginning.

Issued in Los Angeles, California, on June 3, 1986.

James A. Holweger,

Acting Manager, Air Traffic Division.

[FR Doc. 86-13335 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASO-9]

Designation of Transition Area, Foley, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Foley, Alabama, transition area to accommodate Instrument Flight Rule (IFR) operations at Foley Municipal Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Summerdale Nondirectional Radio Beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 7, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Foley, Alabama, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach to Foley Municipal Airport. The operating status of the airport is changed to IFR (51 FR 11752). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Foley, Alabama, transition area and lowers the base of controlled airspace, in the vicinity of Foley Municipal Airport, from 1,200 to 700 feet above the surface.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. By amending § 71.118 as follows:

Foley, AL—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Foley Municipal Airport (Lat.30°25'45"N., Long. 87°42'03" W.); excluding that portion which coincides with the Fairhope and Gulf Shores, AL, transition areas.

Issued in East Point, Georgia, on June 3, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-13332 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 27

[Docket No. R-86-1026]

Nonjudicial Foreclosure of Multifamily Mortgages; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations on nonjudicial foreclosure of multifamily mortgages to correct a typographical error in provisions describing the commissioner's authority to withdraw the security property from foreclosure and cancel the foreclosure sale.

EFFECTIVE DATE: July 29, 1986.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Associate General Counsel for Program Enforcement, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6568. [This is not a toll free number.]

SUPPLEMENTARY INFORMATION: On February 24, 1984, the Department published regulations at 24 CFR Part 27 implementing the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701-3717 (49 FR 7072). Those Regulations, at 24 CFR 27.25(a), describe the circumstances under which the foreclosure commissioner must withdraw the security property from foreclosure and cancel the foreclosure sale. After the regulations were published, it was found that 24 CFR 27.25(a)(3)(ii) contained a typographical error which caused it to deviate substantively from the statute, 12 U.S.C. 3709(a)93)(B), and from the proposed rule, 47 FR 51410, (November 15, 1982).

As published, the regulation states that the property must be withdrawn from foreclosure if either of the conditions described in 24 CFR 27.25(a)(3)(i) and (ii), *or* the condition described 24 CFR 27.25 (a)(3)(iii), is present, whereas the statute and proposed rule require that either of the conditions described in §§ 27.25(a)(3)(iii) and (ii) *and* the condition described in § 27.25(a)(3)(iii) must be present before the property can be withdrawn. This final rule will conform the regulation to the statute.

This corrective change to the regulations should have no significant effect on the existing legal rights of any party. Accordingly, the Department has concluded that notice and public comment on the rule is unnecessary and that good cause exists for publishing the rule as a final rule.

In accordance with 24 CFR 50.20(k), an environmental finding is not necessary because the change is merely corrective and effects only internal administrative procedures. As such, it is categorically excluded from the environmental requirements of 24 CFR Part 50.

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

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule makes a technical change to internal agency procedures. This change should have no significant effect on any party, other than the Federal government.

This rule was not listed in the Department's Semiannual Agenda of Regulations published April 21, 1986 (51 FR 14036) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Programs are: 14.103, 14.112, 14.115, 14.116, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.134, 14.135, 14.137, 14.138, 14.139, 14.149, 14.151, 14.153, 14.154, 14.155, 14.167, and 14.220.

List of Subjects in 24 CFR Part 27

Mortgages, Foreclosures

PART 27—NONJUDICIAL FORECLOSURES OF MULTIFAMILY MORTGAGES

Accordingly, Title 24 CFR Part 27 is amended as follows:

1. The authority citation for 24 CFR Part 27 continues to read as follows:

Authority: Secs. 369C(5) and 369I, Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3711(5) and 3717); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3635(d)).

2. Section 27.25(a)(3)(ii) is revised to read as follows:

§ 27.25 Termination or adjournment of foreclosure sale.

(a) * * *

(3) * * *

(ii) In the case of a nonmonetary default, the commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults have been cured and that there are no monetary defaults; and

* * * * *

Dated: June 9, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-13425 Filed 6-12-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8090]

Income Taxes; Possessions Tax Credit; Definition of Product, Significant Business Presence Test, and Cost Sharing and Profit Split Elections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the possessions tax credit. The regulations provide rules for determining whether a possessions corporation has a significant business presence with respect to a product. These regulations also provide rules which implement the cost sharing and profit split elections. This action is necessary because of changes to the applicable tax law made by the Tax Equity and Fiscal Responsibility Act of 1982.

EFFECTIVE DATE: The amendments are effective for taxable years of possessions corporations beginning on or after January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T LR-194-82, telephone 202-566-3289 (not a toll-free call), concerning intangible property income in the absence of an election under section 936(h)(5), the cost sharing and profit split elections, and covered intangibles (§§ 1.936-4, 1.936-6, and 1.936-7); or Carol Doran Klein of the same office concerning the definition of product, the significant business presence test, and contract manufacturing (§ 1.936-5), telephone 202-566-6419.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1984, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 936(h) of the Internal Revenue Code of 1954 (49 FR 1227). The amendments were proposed to conform the regulations to changes made to the Internal Revenue Code by section 213 of the Tax Equity and Fiscal Responsibility Act of 1982 (the Act) (Pub. L. 97-248, 96 Stat. 452). A public hearing was held on April 3, 1984. After consideration of all comments received regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Discussion of Comments and Revised Amendments

Section 1.936-4: Intangible Property Income in the Absence of an Election Out

Commenter suggested that in situations in which there is no intangible property income, a taxpayer should not be limited in computing its taxable income to cost sharing, profit split or the method under section 936 (h)(1) to (h)(3). It was decided, in situations in which there is no intangible property income, to permit a taxpayer to compute its income using the appropriate method as provided under section 482 and the regulations thereunder.

Commenter suggested that the covered intangible exception should apply not only if cost sharing is elected, but also in the absence of an election out. The suggestion was rejected because there is no statutory support for permitting the covered intangible

exception if the taxpayer elects to compute its income under section 936 (h)(1) to (h)(3). The covered intangible exception is permitted under section 936(h)(5)(c)(i)(II), a provision dealing only with the cost sharing election.

Section 1.936–5(a); Definition of the Term "Product"

Commenters suggested that the term "product" not be defined by means of the phrase "manufacturing process" because of possible confusion with the section 954(d)(1)(A) definition of manufacturing. They suggested broader terms such as produced, transformed, incorporated or assembled. This suggestion was adopted. For these purposes, it is intended that production, transformation, incorporation or assembly be given a broad meaning.

Commenters also suggested that the phrase "transformation, incorporation, assembly" be used instead of the phrase "further transformation." This suggestion was also adopted.

The final regulations clarify that a possessions corporation may treat the end-product form as its possession product even though the final stage or stages of production occur outside of a possession.

The final regulations provide that if a possessions corporation produces a product that is sometimes sold to unrelated parties without further processing and is sometimes sold to unrelated parties after further processing, then the possessions corporation generally must choose to treat the same item of property as its possession product, even though it is in some cases an integrated product and in some cases a component product.

Commenters suggested that the proposed regulations required taxpayers to choose either the component product, the integrated product, or the end-product form as their possession product and to apply that choice consistently for all purposes of section 936. Many possessions corporations, however, sell both an integrated product and a component contained in the integrated product. The regulations, when adopted, should not limit the possessions corporation to a return on only one of those products when both are produced in the possessions.

In response to the comments, the final regulations provide that a possessions corporation may designate a different product at each stage of the production process, if the product is sold at the end of that stage to unrelated parties. The possessions corporation's product must be defined consistently for all products sold at the same stage in the production process. Thus, if a possessions company produces a component in a possession and finishes some of the components in the possession and transfers some to an affiliate for finishing in the United States, then, for all finished products sold to third parties, the possessions company must designate either the component or the integrated product as its possession product. Furthermore, if the possessions company produces a product in a possession, sells the product to third parties, and also subjects the product to further processing before sale to third parties, then the possessions corporation may designate two possession products.

Commenters suggested that the final regulations permit taxpayers to designate their possession product by listing those components that are not included in the possession product. This suggestion was adopted.

Grouping of Products

Commenters raised several questions with respect to grouping of products. In response to those comments the final regulations clarify that products that are grouped are treated as one product, and that, if a taxpayer's grouping is disallowed, the effect of the disallowance is to require each of the products that is removed from the group and the remaining group without the excluded products to satisfy separately the significant business presence test. The final regulations also make clear that the determination of whether the production processes included in producing the products that are to be grouped are similar is based on the production processes of the components that are included in the possession product.

Commenters stated that the usefulness of the grouping rules was limited because of the discretion given the Commissioner to require grouping or to disallow a taxpayer's grouping. The final regulations do not allow the Commissioner to require the taxpayer to group products. A primary purpose of permitting grouping is to allow taxpayers to reduce their recordkeeping burden. Because this is the case, the Commissioner will not require the taxpayer to group products.

The final regulations also provide that a taxpayer may not include in a group an item of property that is not produced in whole or in part in a possession.

Commenters suggested that the final regulations clarify whether the general rules concerning grouping apply to pharmaceuticals. The final regulations apply the general rules to pharmaceuticals. The reason for this change is that a purpose of grouping is to ease the taxpayer's recordkeeping burden with respect to isolating production costs for a particular product. If the production processes involved in producing two items are not similar, then the taxpayer should be able to separate its production costs for those items. Thus, the rules for grouping pharmaceuticals should be the same as the rules for grouping other products. These revisions also clarify that pharmaceuticals may be grouped even though they contain different active or inert ingredients so long as the production processes are similar.

Interim Period and Transitional Period Rules

The proposed regulations provided that a possessions corporation which produced a product in a possession on September 3, 1982, need not satisfy the significant business presence test with respect to that product until taxable years beginning on or after January 1, 1986. For purposes of determining the product produced in the possessions, only the activities actually performed in the possession are to be taken into account. If a possessions corporation would claim a return on intangibles associated with the portion of the product produced outside of the possession, then the possessions corporation must satisfy the significant business presence test with respect to that larger product.

Commenters objected to these rules stating that the statute waives the significant business presence test with respect to products produced in the possession on date of enactment, but the effect of the proposed rules is to impose a significant business presence test on products produced on date of enactment. Commenters also claim that Congress intended to treat "old" products more favorably than, or at least as favorably as, "new" products. New products are not immediately subject to the full significant business presence test but rather are entitled to a phase-in of the significant business presence test. If "old" products are to be subject to a significant business presence test prior to January 1, 1986 commenters stated that the "old" products should be allowed the benefit of phasing in the test. Furthermore, no test should apply for taxable year 1983 because the proposed regulations were not published until 1984 and, therefore, taxpayers had no opportunity to arrange their affairs so that they could satisfy this test.

These various comments were rejected for the following reasons. First, requiring the product to be produced in a possession within the meaning of

section 954(d)(1)(A) does not impose a significant business presence test on products produced in a possession on the date of enactment. The regulations must provide guidance as to the meaning of the phrase "produces a product . . . . in a possession on the date of enactment." Under the interpretative authority granted the Secretary, the Treasury has determined that this phrase means the product that is produced within the meaning of section 954(d)(1)(A). Second, the commenters claim that Congress intended to treat products produced in a possession on the date of enactment more favorably than products first produced in a possession after that date. There is no basis for this claim either in the statute or in the legislative history.

Section 936(h)(5)(B)(iii)(I) provides that, if a possessions corporation produced a product in a possession on the date of enactment, then, with respect to such product, the possessions corporation is not required to meet the significant business presence test for its taxable years beginning before January 1, 1986. Section 936(h)(5)(B)(iv)(I) provides that the Secretary may prescribe regulations setting forth an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after date of enactment and not described in section 936(h)(5)(B)(iii)(I). Thus, the Code states that the Secretary has authority to prescribe regulations adopting a transitional rule in all cases except those which are covered by the statutory exemption from the significant business presence test.

It may be more advantageous to the taxpayer to satisfy a reduced significant business presence test with respect to an integrated product than to be exempted from the significant business presence test and be permitted to determine income under the cost sharing or profit split option only with respect to the component product or the end-product form. The reason that a possessions corporation might be in a better position if it could take advantage of the reduced significant business presence test is that, if the possessions corporation is able to satisfy the reduced test with respect to an integrated product, then the possessions corporation will be entitled to a return on intangibles associated with the integrated product. If, however, the possessions corporation is exempt from the significant business presence test, then the corporation will only be entitled to a return on the intangibles associated with the product produced in the possessions. Thus the income attributable to the more narrowly defined product, and against which credit will be granted, will be less. Correspondingly, the income taxed to the U.S. affiliates will be increased.

The interpretation adopted in the final regulations is consistent with the legislative history.

The conference report states that:

> The conferees also intend that the *provision be administered in a fashion so as to encourage increased Puerto Rican employment and investment in depreciable property at as low a cost to the Treasury as possible.*
>
> The conferees are concerned about Puerto Rican job creation and there is continuing concern that the provision may not be adequately targeted towards that goal. (Emphasis added).

H.R. REP. No. 760, 97th Cong., 2nd Sess., at 505 (1982). The legislative history also indicates the transitional rules described above only apply to future operations and future possession products and possession services. *General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982;* H.R. 4961, Pub. L. 97–248, at 89 (1982). If these two parts of the legislative history are read together, it is apparent that Congress intended to encourage new possessions employment and investment by providing an incentive for corporations to move new operations into the possessions after the date of enactment. Corporations which were already operating in the possessions should not get the benefit of this provision, with respect to such operations, because allowing them these benefits would not encourage new employment and investment in the possessions and would result in substantial revenue loss to the Treasury. Thus, it is believed that Congress intended to provide the benefit of a reduced significant business presence test only to corporations starting new operations in the possessions.

Different Product for Export Sales

The proposed regulations provided that a possessions corporation could not define its product differently for export sales than for domestic sales. Commenters stated that the separate election for export sales should be interpreted in such a manner that the possessions corporations's product may be defined differently for export sales than for domestic sales. They further state that foreign countries frequently require some local processing in order to avoid tariff or other import restrictions. Further, requiring the possessions corporation to define consistently its product for export and domestic sales will discourage investment in the possessions. If a company will not be allowed any return on intangibles associated with finishing a product for the domestic market there will be no incentive to set up new finishing operations in the possessions. The final regulations permit a possessions corporation to define its product differently for export sales than for domestic sales.

Section 1.936–5(b); Significant Business Presence Test General Rules

The final regulations make clear that two related possessions corporations may not aggregate their production or direct labor costs for purposes of determining whether they satisfy the significant business presence test with respect to a single product.

Production Costs

Commenters suggested that the phrase "production costs" should be used if the regulations intended that the words be defined in the same manner as under section 471. This suggestion was adopted. The final regulations use the phrase "production costs" because it is intended that this phrase be defined consistently for purposes of sections 471 and 936. Production costs do not, however, include direct material costs and interest.

Commenters requested that the final regulations clarify whether taxpayers are permitted to include in production costs those costs that they did not include in inventoriable costs for purposes of section 471. The final regulations clarify that taxpayers may not include such costs for purposes of section 936.

The final regulations clarify that a possessions corporation may not include a cost as a production cost unless all members of the affiliated group include that cost as a production cost. Also, with respect to production costs, the final regulations clarify that taxpayers should use their current year's production costs to determine whether they satisfy the significant business presence test regardless of whether they use the FIFO or LIFO method of accounting.

Direct Labor Cost

Commenters stated that the proposed regulations were unclear as to whether the direct labor costs involved in processes that are not considered to be manufacturing under section 954(d)(1)(A) (for example, packaging)

could be included in the direct labor costs of the possessions corporation. The final regulations provide that, so long as the cost is includable under section 471 in inventoriable costs, the cost may be considered a direct labor cost of the possessions corporation even though the activity would not constitute manufacturing under section 954(d)(1)(A).

Commenters suggested that the term "direct labor" should include personnel, quality control, maintenance, research and development, accounting, treasury and other functions to the extent these activities take place in the possessions. This suggestion was generally rejected because indirect labor costs are taken into account under the value added test. However, the labor associated with quality control will be considered direct labor if that quality control is an integral part of the production process.

One commenter recommended that, for purposes of the value added test, the amount of gross receipts should be reduced by any excise tax paid by the possessions corporation on units of the product sold for use or consumption in the possession. Because the term "gross receipts" is defined in the same manner as possession sales and the possession sales amount does not include these excise taxes, the gross receipts amount does not include these excise taxes either.

The proposed regulations provided that inspection and testing are indirect production costs. Therefore, the labor costs associated with inspection and testing may not be considered direct labor costs. Commenters stated that quality control is an integral part of the production process and, therefore, the labor costs associated therewith should be considered direct labor costs. This suggestion was adopted in those cases in which quality control is an integral part of the production process.

Commenters suggested that taxpayers should be able to get the benefit of the start-up significant business presence test if they begin operations at a new site in the same possession. This suggestion was rejected because starting up operations in a new possession presents more difficulties than starting at a new site within the same possession.

Commenters suggested that base period construction costs should include the costs associated with the installation of section 1245 property and that any base year that the corporation was not in existence should not be taken into account. Both of these suggestions were rejected.

Commenters recommended that the Secretary adopt additional significant business presence tests. This recommendation was rejected.

Section 1.936–5(c); Contract Manufacturing

The proposed regulations defined the term "contract manufacturing" to include any arrangement between a possessions corporation (or another member of the affiliated group) and an unrelated person if the unrelated person uses intangibles that are related to its product and the intangibles are owned or licensed by a member of the affiliated group. Commenters stated that this part of the definition was too broad. In response to these comments, the definition of contract manufacturing has been narrowed. Contract manufacturing will only include use of an intangible if the intangible is a patent and the product produced under the patent is included in the possession product or if the intangible is a manufacturing intangible and it is established that the arrangement has the effect of materially distorting the application of the significant business presence test. The reason for these rules is to prevent taxpayers from earning intangible income attributable to the patent or other intangibles without taking into account, for purposes of the significant business presence test, the costs associated with producing the patented product. For example, if a taxpayer enters into a contract with an unrelated party whereby the unrelated party produces the patented product for the taxpayer and sells that product to the taxpayer, the unrelated party would earn a return on the manufacturing activities it performed. If the taxpayer incorporated that product into its possession product and then marketed it to the public, the income from the patent would be earned by the taxpayer without any performance of activity by the taxpayer with respect to the patented item. Therefore, the cost of producing the patented product should be taken into account. The regulations provide that these rules shall not apply to such contract manufacturing performed in taxable years beginning before January 1, 1988, nor shall the rules apply to binding contracts for the performance of such contract manufacturing entered into before June 13, 1986.

The proposed regulations treat the entire cost of contract manufacturing performed outside of the possessions as direct labor of the affiliated group performed outside of the possessions. Commenters claim tha this unfairly penalizes taxpayers as the supplier's cost of materials, production costs and profit will be considered direct labor of the affiliated group. If the U.S. affiliates had performed identical manufacturing activities, only the direct labor element of the total costs would be counted against the possessions corporation. The final regulations retain this rule because it is intended to have the protested effect.

Section 1.936–6(a)(1); Product Area Research

Commenter suggested that product area research should apply only to those expenses with respect to which a tax benefit was obtained. This suggestion was rejected since it is inconsistent with the statutory language under section 936(h)(5)(C)(i)(I)(*a*) which defines product area research very broadly and beyond deductible expenses.

Commenter suggested that the cost of acquisition of nonamortizable intangible property should not be included in product area research in the year of acquisition, but instead should either not be included or included over a longer period. The regulation has been amended to include the cost of acquisition of nonamortizable intangibles ratably over a 5-year period. Non-inclusion of nonamortizable intangibles was rejected because section 936(h)(5)(C)(i)(I)(*a*) specifically requires an inclusion of "a proper allowance for amounts incurred in the acquisition of any of the items specified in subsection (h)(3)(B)(i)" (manufacturing intangibles).

Commenters suggested that the regulations make clear that payments described in section 30(b) and other payments made for amortizable and nonamortizable intangibles apply only to those payments made for the acquisition of manufacturing intangible property. This suggestion is in conformity with the statute and the suggested clarification has been made.

Commenter suggested that product area research expenditures be reduced by the income received by a possessions corporation from the sale of a manufacturing intangible to a person outside the affiliated group. The suggestion was adopted. However, the income from the sale does not reduce product area research in the year of the sale, but instead is treated as royalty payments made ratably over the remaining useful life of the intangible. If the intangible is nonamortizable, then product area research is reduced ratably over a 5-year period.

Commenter suggested that product area research not include research and development expenses incurred by a member of an affiliated group pursuant to a contract with an unrelated person

who is entitled to exclusive ownership of the technology resulting from the expenditures. The suggestion was adopted. The final regulations provide that, to the extent the product area research expenditures can be allocated solely to the technology produced for an unrelated person, such expenditures will not be included in product area research provided that the unrelated person has exclusive ownership of the technology and that no member of the affiliated group has a right to use any of the technology.

Commenter requested clarification on the computation of product area research where the component product and integrated product fall within different product areas. The final regulations clarify the issue. If the component product and integrated product are in separate SIC codes and if the component product is included in the definition of the possession product, then the product area research expenditures are aggregated. If the component product is not included in the definition of possesssion product, then the product area research expenditures are not aggregated and the product area research expenditures incurred with respect to the component product are not included in product area research.

Section 1.936-6(a)(2); Possession Sales and Total Sales

Commenter suggested that pre-TEFRA sales should be excluded from the numerator and denominator of the cost sharing fraction. The suggestion was adopted.

Commenter suggested a clarification of the sales price of a component product and an end-product form. In response to the comment the regulations have been redrafted to provide as follows. With respect to a component product, an independent sales price from comparable uncontrolled transactions must be used if such price can be determined in accordance with § 1.482-2(e)(2). With respect to an end-product form, the sales price is the difference between the third party price of the integrated product and the independent sales price of the excluded component product(s) from comparable uncontrolled transactions. If an independent sales price from comparable uncontrolled transactions cannot be obtained, then the sales price of the component product shall be deemed to be equal to the transfer price, determined under the appropriate section 482 method, which the possessions corporation uses under the cost sharing method in computing the income it derives with respect to the component product. Alternatively, the possessions corporation may determine the sales price for the component product using a production cost ratio, but if this method is used, then the transfer price used by the possessions corporation in computing its income may not be greater than such sales price. A similar rule deals with an end-product form. The method chosen in the final regulations is preferable to merely using the production cost ratio since the transfer price will be used by the taxpayer in computing income and therefore, should, if possible, also be reflected in the numerator of the cost sharing fraction.

Commenter suggested that the regulations provide that excise taxes paid by the possessions corporation when the product is for ultimate use or consumption in the possession not be included in possession sales. The suggestion was adopted. The final regulations provide that the amount of excise tax is excluded from both the numerator and denominator of the cost sharing fraction.

Commenter suggested that rules be provided to permit cost sharing with respect to sales of possession products to members of the affiliated group which includes the possessions corporation where the possessions product is not sold outside of the affiliated group and where the affiliate leases the product to unrelated persons. The suggestion was adopted. The final regulations provide that if an independent sales price for the possession product can be determined under § 1.482-2(e)(2), then a possessions corporation may use the cost sharing method with respect to a possession product which it sells to its affiliate if the affiliate leases such product to unrelated persons or uses the possession product in its own trade or business. If the possession product is a component product or an end-product form where there is not a comparable uncontrolled price, then the taxpayer may determine the sales price of the component product or end-product form under rules provided elsewhere in the regulation. For taxable years beginning after June 13, 1986, a possessions corporation will not be entitled to the benefits of the cost sharing method with respect to units of a possession product which the possessions corporation sells to an affiliate where the affiliate then leases such units to an unrelated person or uses them in its own trade or business, unless the affiliate agrees to be treated for all tax purposes as having sold such units to an unrelated party at the time they were first leased or otherwise placed in service by such affiliate.

Section 1.936-6(a)(3); Credits Against Cost Sharing Payments

Commenter suggested that payments made under cost sharing arrangements with related persons should be creditable against cost sharing payments. This suggestion was not adopted since it is contrary to section 936(h)(5)(C)(i)(I) which specifically sets forth the criteria which must be satisfied for a payment to be treated as a credit against the cost sharing payment.

Section 1.936-6(a)(5); Effect of Election Under the Cost Sharing Method

Commenter suggested that the reduction in deductions under the cost sharing method be limited to the deductions taken by the affiliates which incurred the product area research expenditures. This suggestion was not adopted since it might result in a possessions corporation being treated as the owner of a manufacturing intangible without any appropriate reduction in deductions of a related affiliate.

Section 1.936-6(b)(1); Profit Split Computation of Combined Taxable Income

Commenter suggested that the regulations should be modified and that the general principles under § 1.861-8 should be followed without modification for allocating marketing and distribution expenses. In response to comments, the rules for allocations of marketing and other distribution expenses have been modified to permit separately identifiable expenses related solely to a specific product or group of products to be allocated to the class of gross income defined by that specific product or group of products. The rules for apportionment of these deductions remain unchanged. The rules for allocation and apportionment of other expenses are also unchanged.

Commenter raised the issue as to how samples should be treated. The final regulations take the position that samples are to be treated as a marketing expense and not as inventoriable costs. However, for taxable years beginning prior to January 1, 1986, the taxpayer at its option may treat the cost of samples as either inventoriable costs or as a marketing expense.

Commenter suggested that the regulations take the position that the non-possessions corporation's share of the profit split should be deemed to accrue on the last day of the taxable year for estimated tax purposes. The suggestion was adopted.

Commenter suggested that in allocating one-half of the combined taxable income under the profit split

option to the appropriate member of the affiliated group the first allocation should be made to U.S. affiliates which have gross income with respect to the product produced in whole or in part in the possession. The suggestion was adopted.

Commenter suggested a clarification of the sales price of a component product or an end-product form in computing combined taxable income. In response to the comment, the regulations have been redrafted to provide as follows: With respect to a component product, an independent sales price from comparable uncontrolled transactions must be used if such price can be determined in accordance with § 1.482–2(e)(2). With respect to an end-product form, the sales price is the difference between the third party price of the integrated product and the independent sales price of the component product from comparable uncontrolled transactions. If an independent sales price from comparable uncontrolled transactions cannot be obtained, then the taxpayer may use the production cost ratio in computing the sales price for the component product and the end-product form.

Commenter suggested that rules be provided to permit profit split with respect to sales of possession products to U.S. members of the affiliated group of corporations which includes the possession corporation where the possession product is sold to the U.S. affiliate for use in its own trade or business or the U.S. affiliate leases the product to unrelated persons of foreign affiliates. The suggestion was adopted. The final regulations provide that if an independent sales price for the possession product can be obtained, then a possession corporation may use the profit split method with respect to a possession product which it sells to its affiliate if the affiliate leases such product to unrelated persons or uses the possession product in its own trade or business. If the possession product is a component product or an end-product form where there may not be a comparable uncontrolled price, then the taxpayer may determine the sales price of the component or end-product form under rules provided elsewhere in the regulations.

Commenters raised issues with respect to a U.S. affiliate which includes purchases of the possession product in a dollar-value LIFO inventory pool. The proposed regulations failed to convert costs into sales revenue. The regulations have been amended with special rules for determining both costs and sales revenue for purchases and sales of possession products where the U.S. affiliate uses the dollar-value LIFO inventory pool for the possession product. The sales revenue determined in this manner also applies for the cost sharing option.

Section 1.936–6(c); Convered Intangibles

Commenter suggested that a covered manufacturing intangible should not be required to be obtained directly from an unrelated person and that obtaining it indirectly from an unrelated person through an affiliate should be permitted. The suggestion was not adopted. However, the regulation has been modified to permit a manufacturing intangible to qualify as a covered intangible if it was both acquired by an affiliate from an unrelated person and transferred to the possessions corporation by the affiliate prior to September 3, 1982.

Commenter suggested that licensing of an intangible from a related party should give rise to a covered intangible. The suggestion was not adopted since the statute requires that the intangible be "acquired" from an unrelated person. A license, even an exclusive license, dose not constitute an acquisition of the intangible.

Section 1.936–7(a); Manner of Making Election

Commenter suggested that the requirement that all affiliates consent to the election should be replaced by a blanket consent by the parent. The suggestion was not adopted. However, the consent rules have been liberalized.

Commenter suggested that the election out should be on a product-by-product basis rather than a product area basis. The suggestion was not adopted.

Commenter suggested that the one-time change in election should be applicable retroactively and should apply to the absence of an election out under section 936(h)(5). The suggestion was adopted. Therefore, the taxpayer will be permitted to make a one-time change of election for all prior and subsequent years or merely for all subsequent years without the consent of the Commissioner.

Commenter suggested that, with respect to a product that does not satisfy the significant business presence test, the provisions of section 936(h) (1) through (4) should apply and the cost sharing payment should be reduced. The suggestion was not adopted. The provisions of section 936(h) (1) through (4) will apply with respect to the product, but the cost sharing payment required with respect to other products will not be reduced.

Commenter suggested that, in situations in which intangible property income of a subsidiary possessions corporation is included in the gross income of a parent possessions corporation, the distribution made under section 936(h)(4) should not be considered in determining whether the parent possessions corporation satisfies the gross income requirements of section 936(b)(2). The suggestion was adopted.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these regulations are not major regulations as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and, thus, the notice and public comment procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act of 1980

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0215.

Drafting Information

The principal authors of this regulation are Jacob Feldman and Carol Doran Klein of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects

26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investment abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAX REGULATIONS

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

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

Secs. 1.936–4 through –7 also issued under 26 U.S.C. 936(h).

Par. 2. 26 CFR Part 1 is amended by the addition of the following new §§ 1.936–4 through 1.936–7 immediately after § 1.936–1.

§ 1.936–4 Intangible property income in the absence of an election out.

The rules in this section apply for purposes of section 936(h) and also for purposes of section 934(e), where applicable.

Question 1: If a possessions corporation and its affiliates do not make an election under either the cost sharing or 50/50 profit split option, what rules will govern the treatment of income attributable to intangible property owned or leased by the possessions corporation?

Answer 1: Intangible property income will be allocated to the possessions corporation's U.S. shareholders with the proration of income based on shareholdings. If a shareholder of the possessions corporation is a foreign person or a tax-exempt person, the possessions corporation will be taxable on that shareholder's pro rata amount of the intangible property income. If any class of the stock of a possessions corporation is regularly traded on an established securities market, then the intangible property income will be taxable to the possessions corporation rather than the corporation's U.S. shareholders. For these purposes, a United States shareholder includes any shareholder who is a United States person as described under section 7701(a)(30). The term "intangible property income" means the gross income of a possessions corporation attributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and which was in use by such corporation on September 3, 1982.

Question 2: What is the source of the intangible property income described in question 1?

Answer 2: The intangible property income is U.S. source, whether taxed to U.S. shareholders or taxed to the possessions corporation. Such intangible property income, if treated as income of the possessions corporation, does not enter into the calculation of the 80-percent possessions source test or the 65-percent active trade or business test of section 936(a)(2) (A) and (B).

Question 3: How will the amount of income attributable to intangible property be measured?

Answer 3: Income attributable to intangible property includes the amount received by a possessions corporation from the sale, exchange, or other disposition of any product or from the rendering of a service which is in excess of the reasonable costs it incurs in manufacturing the product or rendering the service (other than costs incurred in connection with intangibles) plus a reasonable profit margin. A reasonable profit margin shall be computed with respect to direct and indirect costs other than (i) costs incurred in connection with intangibles, (ii) interest expense, and (iii) the cost of materials which are subject to processing or which are components in a product manufactured by the possessions corporation. Notwithstanding the above, certain taxpayers who have been permitted by the Internal Revenue Service in taxable years beginning before January 1, 1983, to use the cost-plus method of pricing without reflecting a return from intangibles, but including the cost of materials in the cost base, will not be precluded from doing so. (Sec. 3.02(3), Rev. Proc. 63–10, 1963–1 C.B. 490.) Thus, the Internal Revenue Service may continue in appropriate cases to permit such taxpayers to continue to report their income as they have been under existing procedures described in the previous sentence if it is appropriate under all the facts and circumstances and does not distort the income of the taxpayer.

Question 4: If there is no intangible property related to a product produced in whole or in part by a possessions corporation, what method may the possessions corporation use to compute its income?

Answer 4: The taxpayer may compute its income using the appropriate method as provided under section 482 and the regulations thereunder. The taxpayer may also elect the cost sharing or profit split method.

§ 1.936–5 Intangible property income when an election out is made: Product, business presence, and contract manufacturing.

The rules in this section apply for purposes of section 936(h) and also for purposes of section 934(e), where applicable.

(a) *Definition of product.*

Question 1: What does the term "product" mean?

Answer 1: The term "product" means an item of property which is the result of a production process. The term "product" includes component products, integrated products, and end-product forms. A component product is a product which is subject to further processing before sale to an unrelated party. A component product may be produced from other items of property, and if it is so produced, may be treated as including or not including (at the choice of the possessions corporation) one or more of such other items of property for all purposes of section 936(h)(5). An integrated product is a product which is not subject to any further processing before sale to an unrelated party and which includes all component products from which it is produced. An end-product form is a product which—

(1) Is not subject to any further processing before sale to an unrelated party;

(2) Is produced from a component product or products; and

(3) Is treated as not including certain component products for all purposes of section 936(h)(5).

A possessions corporation may treat a component product, integrated product, or end-product form as its possession product even though the final stage or stages of production occur outside the possession. Further processing includes transformation, incorporation, assembly, or packaging.

Question 2: If a possessions corporation produces both a component product and an integrated product (which by definition includes the end-product form), may the possessions corporation use the options under section 936(h)(5) to compute its income with respect to either the component product, the integrated product or the end-product form?

Answer 2: Yes. The possessions corporation may choose to treat the component product, the integrated product, or the end-product form as the product for purposes of determining whether the possessions corporation satisfies the significant business presence test. The possessions corporation must treat the same item of property as its product (the possession product) for all purposes of section 936(h)(5) for that taxable year, including the significant business presence test under section 936(h)(5)(B)(ii), the possessions sales calculation under section 936(h)(5)(C)(i)(I), the determination of income under section 936(h)(5)(C)(i)(II), and the combined

taxable income computations under section 936(h)(5)(C)(ii). Although the possessions corporation must treat the same item of property as its product for all purposes of section 936(h)(5) in a particular taxable year, its choice of the component product, integrated product or end-product form may be different from year to year. The possessions corporation must specify the possession product on a statement attached to its return (Schedule P of Form 5735). The possessions corporation may specify its choice by either listing the components that are included in the possession product or the components that are excluded from the possession product. The possessions corporation must file a separate Schedule P with respect to each possession product. The possessions corporation must attach to each Schedule P detailed computations indicating how the significant business presence test is satisfied with respect to the possession product identified in that Schedule P.

Question 3: A possessions corporation produces a product that is sometimes sold to unrelated parties without further processing and is sometimes sold to unrelated parties after further processing. May the possessions corporation choose to treat the same item of property as the possession product even though in some cases it is an integrated product and in some cases it is a component product?

Answer 3: Yes. Except as provided in questions and answers 4 and 5, the possessions corporation must designate a single possession product even though it is sometimes a component product and sometimes an integrated product.

Question 4: A possessions corporation produces a product that is sometimes sold without further processing by any member of the affiliated group to unrelated parties or to related parties for their own consumption and is sometimes sold after further processing by any member of the affiliated group to unrelated parties or to related parties for their own consumption. May the possessions corporation designate two products as possession products?

Answer 4: The possessions corporation may designate two or more possession products. The possessions corporation must use a consistent definition of the possession product for all items of property that are sold to unrelated parties or consumed by related parties at the same stage in the production process. The significant business presence test shall apply separately to each product designated by the possessions corporation. The possessions corporation shall compute its income separately with respect to each product.

Question 5: A possessions corporation produces a product in one taxable year and does not sell all of the units that it produced. In the next taxable year the possessions corporation produces a product which includes the product produced in the prior year. The possessions corporation could not have satisfied the significant business presence test with respect to the units produced the first taxable year if the larger possession product had been designated. May the possessions corporation designate two possession products in the second year?

Answer 5: Yes. The possessions corporation may designate two possession products. However, once a product has been designated for a particular year all sales of units produced in that year must be defined in the same manner. In addition, the taxpayer must maintain a significant business presence in a possession with respect to that product. Sales shall be deemed made first out of the current year's production. If all of the current year's production is sold and some inventory is liquidated, then the taxpayer's method of inventory accounting shall be applied to determine what year's layer of inventory is liquidated.

Example (1). A possessions corporation S, manufactures a bulk pharmaceutical in a possession. S transfers the bulk pharmaceutical to its U.S. parent, P, for encapsulation and sale by P to customers. S satisifes the significant business presence test with respect to the bulk pharmaceutical (the component product) and the combination of the bulk pharmaceutical and the capsule (the integrated product). S may use the cost sharing or profit split method to compute its income with respect to either the component product or the integrated product.

Example (2). The facts are the same as in example (1) except that S does not satisfy the significant business presence test with respect to the integrated product. S may use the cost sharing or profit split method to compute its income only with respect to the component product. However, if in a later taxable year S satisfies the significant business presence test with respect to the integrated product, then S may use the cost sharing or profit split method to compute its income with respect to that integrated product for that taxable year.

Example (3). P, a domestic corporation, produces in bulk form in the United States the active ingredient for a pharmaceutical product. P transfers the bulk form to S, a wholly owned possessions corporation. S uses the bulk form to produce in Puerto Rico the finished dosage form drug. S transfers the drug in finished dosage form to P, which sells the drug to unrelated customers in the U.S. The direct labor costs incurred in Puerto Rico by S during its taxable year in formulating, filling and finishing the dosage form are at least 65 percent of the total direct labor costs incurred by the affiliated group in producing the bulk and finished forms during that period. S manufactures (within the meaning of section 954(d)(1)(A)) the finished dosage form. S has elected out under section 936(h)(5) under the profit split option for the drug product area (SIC 283). P and S may treat the bulk and finished dosage forms as parts of an integrated product. Since S satisfies the significant business presence requirement with respect to the integrated product, it is entitled to 50 percent of the combined taxable income on the integrated product.

Example (4). A possessions corporation, S, produces the keyboard of an electric typewriter and incorporates the keyboard with components acquired from a related corporation into finished typewriters. S does not satisfy the significant business presence test with respect to the typewriters (the integrated product). Therefore, S may use the cost sharing or profit split method to compute its income only with respect to a component product or end-product form. For taxable year 1983, S specifies on a statement attached to its return (Schedule P of Form 5735) that the possession product is the end-product form. The statement indentifies the components—for example, the keyboard structure and frame—which are included in the possession product. S's definition of the possession product will apply to all units of the electric typewriters which S produces in whole or in part in the possession and which are sold in 1983. Thus, all units of a given component incorporated into such typewriters will be treated in the same way. For example, all keyboards and all frames will be inlcuded in the possession product, and all electric drive mechanisms and rollers will be excluded from the possession product.

Example (5). Possessions corporation A produces printed circuit boards in a possession. The printed circuit boards are sold to unrelated parties. A also uses the boards to produce personal computers in the possession. A may designate two possession products: printed circuit boards and personal computers. The significant business presence test applies separately with respect to each of these products. Thus, for those printed circuit boards that are sold to unrelated parties, only the costs of the possessions corporation and the other members of the affiliated group that are incurred with respect to units of the printed circuit boards which are produced in whole or in part in the possessions and sold to third parties shall be taken into account. Conversely, with respect to personal computers, only the costs incurred with respect to the personal computers shall be taken into account. This would include the costs with respect to printed circuit boards that are incorporated into personal computers but not the costs incurred with respect to printed circuit boards that are sold without further processing to unrelated parties.

Example (6). Possessions corporation S produces integrated circuits in a possession. P, an affilate of S, produces circuit boards in the United States. P transfers the circuit boards to S. S assembles the integrated

circuits and the circuit boards. S sells some of the loaded circuit boards to third parties. S retains some of the loaded circuit boards and incorporates them into central processing units. The central processing units are then sold to third parties. S may designate two possession products. S must use a consistent definition of the possession product for all units that are sold at the same stage in the production process. Thus, with respect to those units sold after assembly of the integrated circuits and the printed circuits boards, if S cannot satisfy the significant business presence test with respect to all the loaded circuit boards (the integrated product), then S must designate a lesser product, either the integrated circuit (the component product) or the loaded circuit board less the printed circuit board (the end-product form) as its possession product. With respect to the central processing units sold the same rule would apply. Thus, if S cannot satisfy the significant business presence test with respect to the entire central processing unit for all of the central processing units sold, S must designate some lesser product as its possession product.

Example (7). S is a possession corporation. In 1985, S produced 100 units of product X. Those units were finished into product Y in 1985 by affiliates of S. Product X is a component of product Y. In 1985, S satisfies the direct labor test with respect to product X but not with respect to product Y. S designates the component product X as its possession product. In 1986 S produces 100 units of product X and finishes those units into product Y. S would have satisfied the significant business presence test with respect to product X if S had designated product X as its possession product in 1986. In addition, in 1986 S satisfies the significant business presence test with respect to the integrated product Y. In 1986, S sells 150 units of Y. One hundred of those units would be deemed to be produced in 1986. With respect to those units S may designate the integrated product Y as its possession product. Under S's method of inventory accounting the remaining 50 units were determined to have been produced in 1985. With respect to those units S must define its possession product as it did for the taxable year in which those units were produced. Thus, S's possession product would be the component product X.

Question 6: May an affiliated group establish groupings of possession products and treat the groupings as single products?

Answer 6: An affiliated group may establish reasonable groupings of possession products based on similarities in the production processes of the possession products. Possession products that are grouped shall be treated as a single product. The determination of whether the production processes involved in producing the products that are to be grouped are similar is based on the production processes of the components that are included in the possession product. The affiliated group may establish new groupings each year. Any grouping which materially distorts a taxpayer's income or the application of the significant business presence test may be disallowed by the Commissioner. The mere fact that a grouping results in an increased allocation of income to the possessions corporation does not, of itself, create a material distortion of income. If the Commissioner determines that the taxpayer's grouping is improper with respect to one or more products in a group, then those products shall be excluded from the group. The effect of excluding a product or products from the group is that the taxpayer must demonstrate that the group without the excluded products (and each excluded product itself) satisfies the significant business presence test. If the group without the excluded products, or any of the excluded products themselves, fails to satisfy the significant business presence test, then the possessions corporation's income from those products shall be determined under section 936(h) (1) through (4) and the regulations thereunder.

Example (1). The following are examples of possession products the processes of production of which are sufficiently similar that they may be grouped and treated as a single product:

(A) Beverage bases or concentrates for different soft drinks or soft drink syrups, regardless of whether some include sweeteners and some do not:

(B) Different styles of clothing;

(C) Different styles of shoes;

(D) Equipment which relies on gravity to deliver solutions to patients intravenously;

(E) Equipment which relies on machines to deliver solutions to patients intravenously;

(F) Video game cartridges, even though the concept and design of each game title is, in part, protected against infringement by separate copyrights;

(G) All integrated circuits;

(H) All printed circuit boards; and

(I) Hardware and software if the software is one of several alternative types of software offered by the manufacturer and sold only with the hardware, and a purchaser of the hardware would ordinarily purchase one or more of the manufacturer-provided alternative types of software. In all other cases, hardware and software may not be grouped and treated as a single product. Groupings (D) and (E) do not include any solutions which are delivered through the equipment described therein.

Example (2). A possessions corporation produces in Puerto Rico non-programmable, interactive cathode ray tube computer terminals that vary in price. These terminals all interact with a computer or controller to perform their functions of data entry, graphics word processing, and program development. The terminals can be purchased with options that include a built-in printer, different language keyboards, specialized cathode ray tubes, and different power supply features. All terminals are produced in one integrated process requiring the same skills and operations. The differences in the production of the terminals include differences in the number of printed circuit boards incorporated in each terminal, the use of unique keyboards, and the installation and testing of the built-in printer. Some difference in direct labor time to manufacture the terminals occurs, primarily due to the differing number and complexity of printed circuit boards incorporated into each terminal. Different model numbers are assigned to various computer terminals. A grouping by the taxpayer of all of the terminals as one product will be respected by the Service, unless the Service establishes that substantial distortion results. This grouping is proper because the processes of producing each of the terminals are similar.

Example (3). A possessions corporation, S produces several models of serial matrix impact printers and teleprinters. These products have differing performance standards based on such factors as speed (in characters per second), numbers of columns, and cost. The production process for all types of printers involves production of three basic elements: electronic circuitry, the printing head, and the mechanical parts. The process of producing all the printers is similar. Thus, all printers could be grouped and treated as a single product. S purchases electronic circuitry and mechanical parts from a U.S. affiliate. S performs manufacturing functions relative to the printing head and assembles and tests the finished printers. S does not satisfy the significant business presence test with respect to the integrated products. S therefore specifies on a statement attached to its return (Schedule P of Form 5735) that the possession product for both the serial matrix printers and the teleprinters is the end-product form. The statement identifies the components which are included in each possession product. S may group and treat as a single product the serial matrix printers and the teleprinters if both end-product forms include and exclude similar components. Thus, if the end-product form for both the serial matrix printers and the teleprinters includes the mechanical parts and excludes the electronic circuitry, then S may group and treat as a single product the two end-product forms. If, however, the end-product forms for the two items of property contain components that are not similar and as a result of this definition of the end-product forms the production processes involved in producing the two end-product forms are not similar, then S may not group the end-product forms.

Question 7: Is the affiliated group permitted to include in a group an item of property that is not produced in whole or in part in a possession?

Answer 7: No.

Example (1). Possessions corporation S produces 70 units of product A in a possession. P, an affiliate of S, produces 30 units of product A entirely in the United States. All of the units are sold to unrelated parties. The affiliated group is not permitted to group the 30 units of product A produced in the United States with the 70 units produced in the possession because those

units are not produced in whole or in part in a possession.

Example (2). The facts are the same as in example (1) except that the 30 units of product A are transferred to possessions corporation S. S incorporates the 100 units of product A into product B. This incorporation takes place in the possession. S may group and treat as a single product all of the units of product B even though some of those units contain units of product A that were produced in the possession and some that were produced in the United States.

Question 8: What factors should be disregarded in determining whether a particular grouping of similar items of property is reasonable?

Answer 8: In general, differences in the following factors will be disregarded in determining whether a particular grouping of items of property is reasonable:

(1) Differences in testing requirements (*e.g.*, some products sold for military use may require more extensive or different testing than products sold for commercial use);

(2) Differences in the product specifications that are designed to accommodate the product to its area of use or for conditions under which used (*e.g.*, electrical products designed for ultimate use in the United States differ from electrical products designed for ultimate use in Europe);

(3) Differences in packaging or labeling (*e.g.*, differences in the number of units of the items shipped in one package); and

(4) Minor differences in the operations of the items of property.

Question 9: What rules apply for purposes of determining whether pharmaceutical products are properly grouped and treated as a single product?

Answer 9: The rules contained in questions and answers 6 through 8 of this section shall apply. Thus, an affiliated group may establish reasonable groupings based on similarities in the production processes of two or more possession products. In establishing a group the affiliated group may only compare the production processes involved in producing the possession products. The fact that two pharmaceutical products contain different active or inert ingredients is not relevant to the determination of whether the pharmaceutical products may be grouped. For example, if the possession products are bulk chemicals and the production processes involved in producing the bulk chemicals are similar, those bulk chemicals may be grouped and treated as a single product even though they contain different active or inert ingredients. The affiliated group may also group and treat as a single product the finished dosage form drug as long as the production processes involved in producing the finished dosage forms are similar. For these purposes, the production processes involved in producing the following classes of items shall be considered to be sufficiently similar that possession products delivered in a form described in one of the categories may be grouped with other possession products delivered in a form described in the same category.

The categories are:

(1) Capsules, tablets, and pills;

(2) Liquids, ointments, and creams; or

(3) Injectable and intravenous preparations.

No distinctions should be based on packaging, list numbers, or size of dosage. The affiliated group may group and treat as a single product the integrated product (combination of the bulk and the delivery form) only if all the production processes involved in producing the integrated products are similar. The rules of this question and answer are illustrated by the following examples.

Example (1). Possessions corporation S produces two chemical active ingredients X and Y. Both chemical ingredients are produced through the process of fermentation. The affiliated group is permitted to group and treat as a single product the two chemical ingredients.

Example (2). The facts are the same as in example (1) and possessions corporation S finishes chemical ingredient X into tablets and chemical ingredient Y into capsules. The affiliated group is permitted to group and treat as a single product the combination of the bulk pharmaceutical and the finishing because the production processes involved in producing the integrated products are similar.

Example 3. Possessions corporation S produces in a possession a bulk chemical X by fermentation. A United States affiliate, P, produces in the United States a bulk chemical, Y, by fermentation. Both bulk chemicals are finished by S in the possession. The finished dosage form of X is in pill form. The finished dosage form of Y is in injectable form. If S's possession product is the integrated product or the end-product form then S may not group X and Y because the production processes involved in producing the finished dosage form of X and Y are not similar. If S's possession product is the component then S may not group X and Y because the bulk chemical Y is not produced in whole or in part in a possession.

Question 10: Will the fact that a manufacturer of a drug must submit a New Drug Application ("NDA") or a supplemental NDA to the Food and Drug Administration have any effect on the definition or grouping of a product?

Answer 10: No.

Question 11: A possessions corporation which produced a product or rendered a type of service in a possession on or before September 3, 1982, is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986 (the interim period). During such interim period, how will the term "product" be defined for purposes of allocating income under the cost sharing or profit split methods?

Answer 11: During the interim period the product will be determined based on the activities performed by the possessions corporation within a possession on September 3, 1982. During the interim period the possessions corporation may compute its income under the cost sharing or profit split method only with respect to the product that is produced or manufactured within the meaning of section 954(d)(1)(A) within the possession. If the product is manufactured from a component or components produced by an affiliated corporation or a contract manufacturer, then the product will not be treated as including such component or components for purposes of the computation of income under the cost sharing or profit split methods. Thus, the possessions corporation is not entitled to any return on the intangibles associated with the component or components. Notwithstanding the preceding sentences, for taxable years beginning before January 1, 1986, a possessions corporation may compute its income under the cost sharing or profit split method with respect to a product which includes a component or components produced by an affiliated corporation or contract manufacturer if the possessions corporation satisfies with respect to such product the significant business presence test described in section 936(h)(5)(B)(ii) and the regulations thereunder.

Example (1). A possessions corporation, S, was manufacturing (within the meaning of section 954(d)(1)(A)) integrated circuits in a possession on September 3, 1982. S transferred those integrated circuits to related corporation P. P incorporated the integrated circuits into central processing units (CPUs in the United States) and sold the CPUs to unrelated parties. S continued to manufacture integrated circuits in the possession through Juanuary 1, 1986. For taxable years beginning before January 1, 1986, S may compute its income under the cost sharing or profit split method with respect to the integrated circuits regardless of whether S satisfies the significant business presence test. However, unless S satisfies the significant business presence test with respect to the central processing units, S may not compute its income under the cost sharing or profit split methods with respect to the CPUs, and thus, S is not entitled to any

return on manufacturing intangibles associated with CPUs to the extent that they are not related to the integrated circuits produced by S, nor (except as provided in the profit split methods) to any return on marketing intangibles.

Example (2). A possessions corporation, S, was engaged on September 3, 1982, in the manufacture (within the meaning of section 954(d)(1)(A)) of a bulk pharmaceutical in Puerto Rico from raw materials. S sold the bulk pharmaceutical to its U.S. parent, P, for encapsulation and sale by P to customers as the product X. Because S was not engaged in the encapsulation of X, S is not considered to have manufactured the integrated product, X, in Puerto Rico. During the interim period, S may compute its income under the cost sharing or profit split methods with respect to the integrated product, X, only if S satisfies the significant business presence test with respect to X. S may compute its income under the cost sharing or profit split methods with respect to the component product (the bulk pharmaceutical).

Example (3). P is a domestic corporation that is not a possessions corporation. P manufactures a bulk pharmaceutical in the United States. P transfers the bulk pharmaceutical to its wholly owned subsidiary, S, a possessions corporation. On September 3, 1982, S was engaged in the encapsulation of the bulk pharmaceutical in Puerto Rico in a manner which satisfies the test of section 954(d)(1)(A). For taxable years beginning before January 1, 1986, S may compute its income under the cost sharing or profit split methods with respect to the end-product form (the encapsulated drug) regardless of whether S meets the significant business presence test. However, unless S satisfies the significant business presence test with respect to the integrated product, S may not compute its income under the cost sharing or profit split methods with respect to the integrated product, and thus, S is not entitled to any return on the intangibles associated with the bulk pharmaceutical.

Question 12: On September 3, 1982, a possessions corporation, S, was engaged in the manufacture (within the meaning of section 954(d)(1)(A)) of X in a possession. During the interim period, after September 3, 1982, but before January 1, 1986, S produced Y, which differs from X in terms of minor design features. S did not produce Y in a possession on September 3, 1982. Will S be considered to have commenced production of a new product after September 3, 1982, for purposes of the application of the significant business presence test for the interim period?

Answer 12: No. X and Y will be considered to be a single product, and therefore S will not be required to satisfy the business presence test separately with respect to Y during the interim period. In all cases in which the items of property produced on or before September 3, 1982 and the items of property produced after that date could have been grouped together under the guidelines provided in § 1.936-5(a) questions and answers 6 through 10, the possessions corporation will not be considered to manufacture a new product after September 3, 1982.

Question 13: May the term "product" be defined differently for export sales than for domestic sales?

Answer 13: Yes. For rules concerning the application of the separate election for export sales see § 1.936-7(b).

(b) *Requirement of significant business presence—(1) General rules.*

Question 1: In general, a possessions corporation may compute its income under the cost sharing or profit split methods with respect to a product only if the possessions corporation has a significant business presence in a possession with respect to that product. When will a possession corporation be considered to have a significant business presence in a possession?

Answer 1: For purposes of the cost sharing method, the significant business presence test is met if the possessions corporation satisfies either a value added test or a direct labor test. For purposes of the profit split method, the significant business presence test is met if the possessions corporation satisfies either a value added test or a direct labor test and also manufactures the product in the possession within the meaning of section 954(d)(1)(A).

Question 2: How may a possessions corporation satisfy the direct labor test with respect to a product?

Answer 2: The possessions corporation will satisfy the direct labor test with respect to a product if the direct labor costs incurred by the possessions corporation as compensation for services performed in a possession are greater than or equal to 65 percent of the direct labor costs of the affiliated group for units of the possession product produced during the taxable year in whole or in part by the possessions corporation.

Question 3: How may a possessions corporation satisfy the value added test?

Answer 3: In order to satisfy the value added test, the production costs of the possessions corporation incurred in the possession with respect to units of the possession product produced in whole or in part by the possessions corporation in the possession and sold or otherwise disposed of during the taxable year by the affiliated group to unrelated parties must be greater than or equal to twenty-five percent of the difference between gross receipts from such sales or other dispositions and the direct material costs of the affiliated group for materials purchased for such units from unrelated parties.

Question 4: Must the significant business presence test be met with respect to all units of the product produced during the taxable year by the affiliated group?

Answer 4: No. The significant business presence test must be met with respect to only those units of the product produced during the taxable year in whole or in part by the possessions corporation in a possession.

Question 5: For purposes of determining whether a possessions corporation satisfies the significant business presence test, how shall the possessions corporation treat the cost of components transferred to the possessions corporation by a member of the affiliated group?

Answer 5: The treatment of the cost of components transferred from an affiliate depends on whether the possession product is treated as including the components for purposes of section 936(h). If it is, then for purposes of the value added test, the production costs associated with the component shall be treated as production costs of the affiliated group that are not incurred by the possessions corporation. Those production costs, other than the cost of materials, shall not be treated as a cost of materials. For purposes of the direct labor test and the alternative significant business presence test, the direct labor costs associated with such components shall be treated as direct labor costs of the affiliated group that are not incurred by the possessions corporation. If the possession product is treated as not including such component for purposes of section 936(h), then, solely for purposes of determining whether the possessions corporation satisfies the value added test, the cost of the component shall not be treated as either a cost of materials or as a production cost. For purposes of the direct labor test and the alternative significant business presence test, the direct labor costs associated with such component shall not be treated as direct labor costs of the affiliated group. If the possession product is treated as not including such component, then the possessions corporation shall not be entitled to any return on the intangibles associated with the manufacturing or marketing of the component.

Question 6: May two or more related possessions corporations aggregate their production or direct labor costs for purposes of determining whether they satisfy the significant business presence test with respect to a single product?

Answer 6: No.

Question 7: A possessions corporation, S, purchases raw materials

and components from an unrelated corporation which conducts business outside of a possession. The unrelated corporation is not a contract manufacturer. What is the treatment of such raw materials and components for purposes of the significant business presence test?

Answer 7: Where Company S purchases raw materials or components from an unrelated corporation which is not a contract manufacturer, the raw materials and components are treated as materials, and the costs related thereto are treated as a cost of materials.

(2) *Direct labor costs.*

Question 1: How is the term "direct labor costs" to be defined?

Answer 1: The term "direct labor costs" has the same meaning which it has for purposes of § 1.471–11(b)(2)(i). Thus, direct labor costs include the cost of labor which can be identified or associated with particular units or groups of units of a specific product. The elements of direct labor include such items as basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d)), shift differential, payroll taxes, and payments to a supplemental unemployment benefit plan paid or incurred on behalf of employees engaged in direct labor.

Question 2: May a taxpayer treat a cost as a direct labor cost if it is not included in inventoriable costs under section 471 and the regulations thereunder?

Answer 2: No. A cost may be treated as a direct labor cost only if it is included in inventoriable costs. However, a cost may be considered a direct labor cost even though the activity to which it relates would not constitute manufacturing under section 954(d)(1)(A) as long as the cost is included in inventoriable costs.

Question 3: May the members of the affiliated group include as direct labor costs the labor element in indirect production costs?

Answer 3: No. The labor element of indirect production costs may not be considered as part of direct labor costs.

Question 4: Do direct labor costs include the costs which can be identified or associated with particular units or groups of units of a specific product if those costs could also be described as quality control and inspection?

Answer 4: Yes. Direct labor costs include costs which can be identified or associated with particular units or groups of units of a specific product. Thus, if quality control and inspection is an integral part of the production process, then the labor associated with that quality control and inspection shall be considered direct labor. For example, integrated circuits are soldered to printed circuit boards by passing the boards over liquid solder. Employees inspect each of the boards and repair any imperfectly soldered joints discovered on that inspection. The labor associated with this process is direct labor. However, if a person performs random inspections on limited numbers of products, then that labor associated with those inspections shall be considered quality control and therefore indirect labor.

Question 5: Do direct labor costs of the possessions corporation include only the costs which were actually incurred or do they take into account, in addition, any labor savings which result because the activities were performed in a possession rather than in the United States?

Answer 5: Direct labor costs include only the costs which were actually incurred.

Question 6: For purposes of determining whether a possessions corporation satisfies the significant business presence test for a taxable year with respect to a product, how shall the possessions corporation compute its direct labor costs of units of the product?

Answer 6: The direct labor test shall be applied separately to products produced in whole or in part by the possessions corporation in the possession during each taxable year. Sales shall be deemed to be made first out of the current year's production. If sales are made only out of the current year's production, then the direct labor costs of producing those units that are sold shall be the pro rata portion of the total direct labor costs of producing all the units that are produced in whole or in part in the possession by the possessions corporation during the current year. If all of the current year's production is sold and some inventory is liquidated, then the direct labor test shall be applied separately to the current year's production and the liquidated inventory. The direct labor costs of producing the liquidated inventory shall be the pro rata portion of the total direct labor costs that were incurred in producing all the units that were produced in whole or in part by the possessions corporation in the possessions in the layer of liquidated inventory determined under the member's method of inventory accounting.

Example. S is a cash basis calendar year taxpayer that has made an election under section 936(a). In 1985 S produced 100 units of product X. Fifty percent of the direct labor costs of the affiliated group were incurred by S and were compensation for services performed in the possession. Thus, S did not satisfy the significant business presence test with respect to product X in taxable year 1985. During 1986 S produced 100 units of product X. One hundred percent of the direct labor costs of the affiliated group were incurred by S and were compensation for services performed in the possession. In 1986 S sells 150 units of product X. One hundred of those units are deemed to be from the units produced in 1986. With respect to those units S satisfies the significant business presence test. Under S's method of inventory accounting the remaining 50 units were determined to be produced in 1985. With respect to those units S does not satisfy the significant business presence test because only 50% of the direct labor costs incurred in producing those units were incurred by S and were compensation for services performed in the possession.

Question 7: What is the result if in a particular taxable year the possessions corporation satisfies the significant business presence test with respect to units of the product produced in one year and fails the significant business with respect to units produced in another year?

Answer 7: For those units of the product with respect to which the possession corporation satisfies the significant business presence test, the possessions corporation may compute its income under the provisions of section 936(h)(5). For those units of the product with respect to which the possessions corporations fails the significant business presence test, the possessions corporation must compute its income under section 936(h) (1) through (4).

Question 8: Do direct labor costs include costs incurred in a prior taxable year with respect to units of the possession product that are finished in a later taxable year?

Answer 8: Yes.

(3) *Direct material costs.*

Question 1: How is the term "direct material costs" to be defined?

Answer 1: Direct material costs include the cost of those materials which become an integral part of the specific product and those materials which are consumed in the ordinary course of manufacturing and can be identified or associated with particular units or groups of units of that product. See § 1.471–3 for the elements of direct material costs.

Question 2: May a taxpayer treat a cost as a direct material cost if it is not included in inventoriable costs under section 471 and the regulations thereunder?

Answer 2: A taxpayer may not treat such costs as direct material costs.

(4) *Production costs.*

Question 1: How is the term "production costs" defined?

Answer 1: The term "production costs" has the same meaning which it has for purposes of § 1.471–11(b) except that the term does not include direct material costs and interest. Thus, production costs include direct labor costs and fixed and variable indirect production costs (other than interest).

Question 2: With respect to indirect production costs described in § 1.471–11(c)(2) (ii) and (iii), may a possessions corporation include these costs in production costs for purposes of section 936, if they are not included in inventoriable costs under section 471 and the regulations thereunder?

Answer 2: No. A possessions corporation may include these costs only if they are included for purposes of section 471 and the regulations thereunder. If a possessions corporation and the other members of the affiliated group include and exclude different indirect production costs in their inventoriable costs, then, for purposes of the significant business presence test, the possessions corporation shall compute its production costs and the production costs of the other members of the affiliated group by subtracting from the production costs of each member all indirect costs included by that member that are not included in production costs by all other members of the affiliated group.

Question 3: Does a change in a taxpayer's method of accounting for purposes of section 471 affect the taxpayer's computation of production costs for purposes of section 936?

Answer 3: Yes. If a taxpayer changes its method of accounting for purposes of section 471, then the same change shall apply for purposes of section 936.

Question 4: For purposes of determining whether a possessions corporation satisfies the significant business presence test for a taxable year with respect to a product, how shall the possessions corporation compute its costs of producing units of the product sold or otherwise disposed to unrelated parties during the taxable year?

Answer 4: All members of the affiliated group may elect to use their current year production costs regardless of whether the members use the FIFO or LIFO method of inventory accounting. If some or all of the current year's production of a product is sold, then the production costs of producing those units sold shall be the pro rata portion of the total production costs of producing all the units produced in the current year. If all of the current year's production of a product is sold and some inventory is liquidated, then the production costs of producing the liquidated inventory shall be the pro rata portion of the production costs incurred in producing the layer of liquidated inventory as determined under the member's method of inventory accounting.

Question 5: How should the members of the affiliated group determine the portion of their production costs that is allocable to units of the product sold or otherwise disposed of during the taxable year?

Answer 5: The members of the affiliated group may use either standard production costs (so long as variances are not material), average production costs, or FIFO production costs to determine the production costs that will be considered to be attributable to units of the product sold or otherwise disposed of during the taxable year. However, all members of the affiliated group must use the same method.

Question 6: When is the quality control and inspection of a product considered to be part of the production activity for that product?

Answer 6: Quality control and inspection of a manufactured product before its sale or other disposition by the manufacturer, or before its incorporation into other products, is considered to be part of the indirect production activity for that initial product. Subsequent testing of a product to ensure that the product is compatible with other products is not a part of the production activity for the initial product.

When a component is incorporated into an end-product form and the end-product form is then tested, the latter testing will be considered to be a part of the indirect production activity for the end-product form and will not be considered to be a part of the production activity for the component.

Question 7: For purposes of the significant business presence test and the allocation of income to a possessions corporation, what is the treatment of the cost of installation of a product?

Answer 7: For purposes of the significant business presence test and the allocation of income to a possessions corporation, product installation costs need not be taken into account as costs incurred in the manufacture of that product, if the taxpayer keeps such permanent books of account or records as are sufficient to establish the fair market price of the uninstalled product. In such a case, the cost of installation materials, the cost of the labor for installation, and a reasonable profit for installation will not be included in the costs and income associated with the possession product. If the taxpayer does not keep such permanent books of account or records, then the cost of installation materials and the cost of labor for installation shall be treated as costs associated to the possession product and income will be located to the possessions corporation and its affiliates under the rules provided in these regulations.

Questions 8: For purposes of the significant business presence test and the allocation of income to a product or service, what is the treatment of the cost of servicing and maintaining a possession product that is sold to an unrelated party?

Answer 8: The cost of servicing and maintaining a possession product after it is sold is not associated with the production of that product.

Questions 9: For purposes of the significant business presence test and the allocation of income to a possessions corporation, what is the treatment of the cost of samples?

Answer 9: The cost of producing samples will be treated as a marketing expense and not as inventoriable costs for these purposes. However, for taxable years beginning prior to January 1, 1986, the cost of producing samples may be treated as either a marketing expense or as inventoriable costs.

(5) *Gross receipts.*

Questions 1: How shall the affiliated group determine gross receipts from sales or other dispositions by the affiliated group to unrelated parties of the possession product?

Answer 1: Gross receipts shall be determined in the same manner as possession sales under the rules contained in § 1.936–6(a)(2).

(6) *Manufacturing within the meaning of section 954(d)(1)(A).*

Question 1: What is the test for determining, within the meaning of section 954(d)(1)(A), whether a product is manufactured or produced by a possessions corporation in a possession?

Answer 1: A product is considered to have been manufactured or produced by a possessions corporation in a possession within the meaning of section 954(d)(1)(A) and § 1.954–3(a)(4) if—

(i) The property has been substantially transformed by the possessions corporation in the possession;

(ii) The operations conducted by the possessions corporation in the possession in connection with the property are substantial in nature and are generally considered to constitute the manufacture or production of property; or

(iii) The conversion costs sustained by the possessions corporation in the possession, including direct labor, factory burden, testing of components before incorporation into an end product and testing of the manufactured product before sales account for 20 percent or more of the total cost of goods sold of the possessions corporation.

In no event, however, will packaging, repackaging, labeling, or minor assembly operations constitute manufacture or production of property. See particularly examples (2) and (3) of § 1.954–3(a)(4)(iii).

Question 2: Does the requirement that a possession product be produced or manufactured in a possession within the meaning of section 954(d)(1)(A) apply to taxable years beginning before January 1, 1986?

Answer 2: A possessions corporation must satisfy this requirement for taxable years beginning before January 1, 1986, in the following cases:

(i) If the possessions corporation makes a separate election under section 936(h)(5)(F)(iv)(II) with respect to export sales;

(ii) If the possessions corporation is electing as its possession product a product that is subject to the interim period rules of § 1.936–5(a) question and answer (10); or

(iii) If the possessions corporation is electing as its possession product a product that is not subject to the interim period rules of § 1.936–5 (a) question and answer (10) and the possessions corporation computes its income under the profit split method with respect to that product.

For rules concerning products first produced in a possession after September 3, 1982, see § 1.936–5(b)(7) question and answer (2).

(7) *Start-up operations.*

Question 1: With respect to products not produced (and types of services not rendered) in the possession on or before September 3, 1982, when must a possessions corporation first satisfy the 25 percent value added test or the 65 percent direct labor test?

Answer 1: A transitional period is established such that a possessions corporation engaged in start-up operations with respect to a product or service need not satisfy the 25 percent value added test or the 65 percent labor test until the third taxable year following the taxable year in which such product is first sold by the possessions corporation or such service is first rendered by the possessions corporation. During the transitional period, the applicable percentages for these tests will be as follows:

	Any year after 1982		
	1	2	3
Value added test	10	15	20
Labor test	35	45	55

Question 2: Does the requirement that a possession product be produced or manufactured in a possessions within the meaning of section 954(d)(1)(A) apply to a product if the possessions corporation is engaged in start-up operations with respect to that product?

Answer 2: The possessions corporation must produce or manufacture the possessions product within the meaning of section 954(d)(1)(A) if the possessions corporation computes its income with respect to that product under the profit split method.

Question 3: When will a possessions corporation be considered to be engaged in start-up operations?

Answer 3: A possessions corporation is engaged in start-up operations if it begins operations in a possession with respect to a product or type of service after September 3, 1982. Subject to the further provisions of this answer, a possessions corporation will be considered to begin operations with respect to a product if, under the rules of § 1.936–5(a) questions and answers (6) through (10), such product could not be grouped with any other item of property manufactured in whole or in part in the possessions by any member of the affiliated group in any preceding taxable year. Any improvement or other change in a possession product which does not substantially change the production process would not be deemed to create a new product. A change in the division of manufacturing activity between the possessions corporation and its affiliates with respect to an item of property will not give rise to a new product. If a possessions corporation was producing a possession product that was either a component product or an end-product form and the possessions corporation expands its operations in the same possession so that it is now producing a product that includes the earlier possession product, the possessions corporation will not be entitled to use the start-up significant business presence test unless the production costs incurred by the possessions corporation in the possession in producing a unit of its new possession product are at least double the production costs incurred by the possessions corporation in the possession in producing a unit of the earlier possession product. If any member of an affiliated group actually groups two or more items of property then, solely for the purposes of determining whether any item of property in the group is a new product, that grouping shall be respected. However, the fact that an affiliated group does not actually group two or more items of property shall be disregarded in determining whether any item of property is a new product. Notwithstanding the above, if a possessions corporation is producing a possession product in one possession and such corporation or a member of its affiliated group begins operations in a different possession, regardless of whether the items of property could be grouped, the affiliated group may treat the units of the item of property produced at the new site of operations in the different possession as a new product.

(8) *Alternative significant business presence test.*

Question 1: Will the Secretary adopt a significant business presence test other than those set forth in section 936(h)(5)(B)(ii)?

Answer 1: Yes. The following significant business presence test is adopted both for the transitional period and thereafter. A possessions corporation will have a significant business presence in a possession for a taxable year with respect to a product or type of service if—

(i) No less than 50 percent of the direct labor costs of the affiliated group for units of the product produced, in whole or in part, during the taxable year by the possessions corporation or for the type of service rendered by the possessions corporation during the taxable year are incurred by the possessions corporation as compensation for services performed in the possession; and

(ii) The direct labor costs of the possessions corporation for units of the product produced or the type of service rendered plus the base period construction costs are no less than 70 percent of the sum of such base period construction costs and the direct labor costs of the affiliated group for such units of the product produced or the type of service rendered.

Notwithstanding satisfaction of the above test, for purposes of determining whether a possessions corporation may compute its income under the profit split

method, a possessions corporation will not be treated as having a significant business presence in a possession with respect to a product unless the possessions corporation manufactures the product in the possession within the meaning of section 954(d)(1)(A).

Question 2: How is the term "base period construction costs" defined?

Answer 2: The term "base period construction costs" means the average construction costs incurred by or on behalf of the possessions corporation for services in the possession during the taxable year and the preceding four taxable years for section 1250 property (as defined in section 1250(c) and the regulations thereunder) that is used for the production of the product or the rendering of the service in the possession, and which represents the original use of the section 1250 property. For purposes of the preceding sentence, if the possessions corporation was not in existence during one or more of the four preceding taxable years, its construction costs for that year or years shall be deemed to be zero. Construction costs include architects' and engineers' fees, labor costs, and overhead and profit (if the construction is performed by a person that is not a member of the affiliated group).

(c) *Definition and treatment of contract manufacturing.*

Question 1: For purposes of determining whether a possessions corporation satisfies the significant business presence test with respect to a product, the costs incurred by the possessions corporation or by any of its affiliates in connection with contract manufacturing which is related to that product and is performed outside the possession shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs of the possessions corporation or as material costs. How is the term "contract manufacturing" to be defined?

Answer 1: The term "contract manufacturing" includes any arrangement between a possessions corporation (or another member of the affiliated group) and an unrelated person if the unrelated person:

(1) Performs work on inventory owned by a member of the affiliated group for a fee without the passage of title;

(2) Performs production activities (including manufacturing, assembling, finishing, or packaging) under the direct supervision and control of a member of the affiliated group; or

(3) Does not undertake any significant risk in manufacturing its product (*e.g.*, it is paid by the hour).

Question 2: Does an arrangement between a member of the affiliated group and an unrelated party constitute contract manufacturing if the unrelated party uses an intangible owned or licensed by a member of the affiliated group?

Answer 2: Such an arrangement will be treated as contract manufacturing if the unrelated party makes use of a patent owned or licensed by a member of the affiliated group in producing the product which becomes part of the possession product of the possessions corporation. In addition, such use of manufacturing intangibles other than patents may be treated as contract manufacturing if it is established that the arrangement has the effect of materially distorting the application of the significant business presence test. However, the preceding sentence shall not apply if the possessions corporation establishes that the arrangement was entered into for a substantial business purpose (e.g., to obtain the benefit of special expertise of the manufacturer or economies of scale). These rules shall not apply to such contract manufacturing performed in taxable years beginning before January 1, 1986, nor shall the rules apply to binding contracts for the performance of such contract manufacturing entered into before June 13, 1986.

Question 3: For purposes of the significant business presence test, how shall a possessions corporation treat the cost of contract manufacturing performed within a possession?

Answer 3: If the possessions corporation uses the value added test, it will be permitted to treat the cost of the contract manufacturing performed in a possession, not including material costs, as a production cost of the possessions corporation. If it uses the direct labor test or the alternative significant business presence test set forth in § 1.936–5(b)(8), it is permitted to treat the direct labor costs of the contract manufacturer associated with such contract manufacturing as a cost of direct labor of the possessions corporation. The allowable amount of the direct labor cost shall be determined in accordance with question and answer 4 below.

Question 4: How are the amounts paid by a possessions corporation to a contract manufacturer for services rendered in a possession to be treated by the possessions corporation in computing the direct labor cost of the product to which such contract manufacturing relates?

Answer 4: If the possessions corporation can establish the contract manufacturer's direct labor cost which was incurred in the possession, such cost will be treated as incurred by the possessions corporation as compensation for services performed in the possession. If the possessions corporation cannot establish such cost, then 50 percent of the amount paid to such contract manufacturer may be treated as incurred by the possessions corporation as compensation for services performed in the possession: provided, that not more than 50 percent of the fair market value of the product manufactured by the contract manufacturer is attributable to articles shipped into the possession, and the possessions corporation receives a statement from the contract manufacturer that this test has been satisfied. If this fair market value test is not satisfied, then the cost of contract manufacturing performed within a possession shall not be treated as a production cost or a direct labor cost of either the possessions corporation or the affiliated group.

Question 5: For purposes of the significant business presence test, what is the treatment of costs which are incurred by a member of the affiliated group (including the possessions corporation) for contract manufacturing performed outside of the possession with respect to an item of property which is a component of the possession product?

Answer 5: If the possession product is treated as including such component, the cost of the contract manufacturing shall be treated as a direct labor cost of members of the affiliated group other than the possessions corporation for purposes of the direct labor test and the alternative significant business presence test, and shall not be treated as a production cost of the possessions corporation or as a cost of materials for purposes of the value added test. If the possession product is treated as not including such component, the cost of the contract manufacturing shall not be treated as a direct labor cost of any member of the affiliated group for purposes of the direct labor test and the alternative significant business presence test, and shall not be treated as a production cost of the possessions corporation or as a cost of materials for purposes of the value added test.

§ 1.936–6 Intangible property income when an election out is made: cost sharing and profit split options; covered intangibles.

The rules in this section apply for purposes of section 936(h) and also for purposes of section 934(e) where applicable.

(a) *Cost sharing option*—(1) *Product area research.*

Question 1: Cost sharing payments are based on research undertaken by the affiliated group in the "product area" which includes the possession product. The term "product area" is defined by reference to the three-digit classification under the Standard Industrial Classification (SIC) code. Which governmental agency has jurisdiction to decide the proper SIC category for any specfic product?

Answer 1: Solely for the purpose of determining the tax consequences of operating in a possession, the Secretary or his delegate has exclusive jurisdiction to decide the proper SIC category under which a product is classified. For this purpose, the product area under which a product is classified will be determined according to the 1972 edition of the SIC code. From time to time and in appropriate cases, the Secretary may prescribe regulations or issue rulings determining the proper SIC category under which a particular product is to be classified, and may prescribe regulations for aggregating two or more three-digit classifications of the SIC code and for classifying product areas according to a system other than under the SIC code.

Question 2: How is the term "affiliated group" defined for purposes of the cost sharing option?

Answer 2: For purposes of the cost sharing option, the term "affiliated group" means the possessions corporation and all other organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, within the meaning of section 482.

Question 3: Are research and development expenditures that are included in product area research limited to research and development expenditures that are deductible under section 174 or that are incurred by U.S. affiliates?

Answer 3: No, product area research is not limited to product area research expenditures deductible under section 174 or to expenses incurred by U.S. affiliates. Product area research also includes deductions permitted under section 168 with respect to research property which are not deductible under section 174; qualified research expenses within the meaning of section 30(b); payments (such as royalities) for the use of, or right to use, a patent, invention, formula, process, design, pattern or know-how; and a proper allowance for amounts incurred in the acquisition of manufacturing intangible property. In the case of an acquisition of depreciable or amortizable manufacturing intangible property, the annual amount of product area research shall be be equal to the allowable depreciation or amortization on the intangible property for the taxable year. In the case of an acquisition of nondepreciable or nonamortizable manufacturing intangible property, the amount expended for the acquisition shall be deemed to be amortized over a five year period and included in product area research in the year of the deemed amortization. Any contingent payment made with respect to the acquisition of nonamortizable manufacturing intangible property shall be treated as amounts incurred in the acquisition of nonamortizable manufacturing intangible property when paid or accrued.

Question 4: Does royalty income from a person outside the affiliated group with respect to the manufacturing intangibles within a product area reduce the product area research pool within the same product area?

Answer 4: Yes.

Question 5: Does income received from a person outside the affiliated group from the sale of a manufacturing intangible reduce the product area research pool within the same product area?

Answer 5: In determining product area research, the income from the sale attributable to noncontingent payments will reduce product area research ratably over the remaining useful life of the property in the case of an amortizable intangible and ratably over a 5-year period in the case of a nonamortizable intangible. Any income attributable to contingent amounts received with respect to the sale of manufacturing intangible property shall be treated as amounts received from the sale of the manufacturing intangible property in the year in which such contingent amounts are received or accrued.

Question 6: If a member of an affiliated group incurs research and development expenses pursuant to a contract with an unrelated person who is entitled to exclusive ownership of all the technology resulting from the expenditures, is the amount of product area research reduced by the amount of such expenditures?

Answer 6: To the extent that the product area research expenditures can be allocated solely to the technology produced for the unrelated person, such expenditures will not be included in product area research expenditures provided, however, that the unrelated person has exclusive ownership of all the technology resulting from these expenditures, and further that no member of the affiliated group has a right to use any of the technology.

Question 7: What is the treatment of product area research expenditures attributable to a component where the component and the integrated product fall within different product areas?

Answer 7: For purposes of the computation of product area research expenditures in the product area by the affiliated group, the product area in which the component falls is aggregated with the product area in which the integrated product falls. However, if the component product and integrated product are in separate SIC codes and if the component product is not included in the definition of the possession product, then the product area research expenditures are not aggregated. The same rule applies where the taxpayer elects a component product which encompasses another component product and the two component products fall into separate SIC codes. In such case, the product area in which the first component falls is aggregated with the product area in which the second component falls.

(2) *Possession sales and total sales.*

Question 1: The cost sharing payment is the same proportion of the total cost of product area research which the amount of "possession sales" of the affiliated group bears to the "total sales" of the affiliated group within the product area. How are "possession sales" defined for purposes of the cost sharing fraction?

Answer 1: The term "possession sales" means the aggregate sales or other dispositions of the possession product, to persons who are not members of the affiliated group, less returns and allowances and less indirect taxes imposed on the production of the product, for the taxable year. Except as otherwise indicated in § 1.936–6(a)(2), the sales price to be used is the sales price received by the affiliated group from persons who are not members of the affiliated group.

Question 2: For purposes of the numerator of the cost sharing fraction, how are possession sales computed where the possession product is a component product or an end-product form?

Answer 2: (i) The sales price of the component product or end-product form is determined as follows. With respect to a component product, an independent sales price from comparable uncontrolled transactions must be used if such price can be determined in accordance with § 1.482–2(e)(2). If an independent sales price of the

component product from comparable uncontrolled transactions cannot be determined, then the sales price of the component product shall be deemed to be equal to the transfer price, determined under the appropriate section 482 method, which the possessions corporation uses under the cost sharing method in computing the income it derives from the active conduct of a trade or business in the possession with respect to the component product. The possessions corporation in lieu of using the transfer price determined under the preceding sentence may treat the sales price for the component product as equal to the same proportion of the third party sales price of the integrated product which the production costs attributable to the component product bear to the total production cost for the integrated product. Production cost will be the sum of direct and indirect production costs as defined in § 1.936–5(b)(4). If the possessions corporation determines the sales price of the component product using the production cost ratio, the transfer price used by the possessions corporation in computing its income from the component product under the cost sharing method may not be greater than such sales price. (ii) With respect to an end-product form, the sales price of the end-product form is equal to the difference between the third party sales price of the integrated product and the independent sales price of the excluded component(s) from comparable uncontrolled transactions, if such price can be determined under § 1.482–2(e)(2). If an independent sales price of the excluded component(s) from uncontrolled transactions cannot be determined, then the sales price of the end-product form shall be deemed to be equal to the transfer price, determined under the appropriate section 482 method, which the possessions corporation uses under the cost sharing method in computing the income it derives from the active conduct of a trade or business in the possession with respect to such end-product form. The possessions corporation in lieu of using the transfer price determined under the preceding sentence may use the production cost ratio method described above to determine the sales price of the end-product form (*i.e.*, the same proportion of the third party sales price of the integrated product which the production costs attributable to the end-product form bear to the total production costs for the integrated product). If the possessions corporation determines the sales price of the end-product form using the production cost ratio, the transfer price used by the possessions corporation in computing its income from the end-product form under the cost sharing method may not be greater than such sales price. For similar rules applicable to the profit split option see § 1.936–6(b)(1), question and answer 12.

Question 3: For purposes of determining possessions sales in the numerator of the cost sharing fraction, will the replacement part price of the product be treated as a price from comparable uncontrolled transactions?

Answer 3: Prices for replacement parts are generally higher than prices for equipment sold as part of an original system. Thus, prices for replacement parts cannot generally be used directly as prices for comparable uncontrolled transactions. However, replacement part prices may be used for estimating comparable uncontrolled prices where the price differential can be reasonably determined and taken into account under § 1.482–2(e)(2).

Question 4: For purposes of determining possession sales in the cost sharing fraction, what is the treatment of components that are purchased by one possessions corporation from an affiliated possessions corporation and which are incorporated into a possession product where the transferor possessions corporation treats the transferred component as a possession product?

Answer 4: When one possessions corporation purchases components from a second possessions corporation which is an affiliated corporation, the purchase price of the components paid to the second possessions corporation shall be subtracted from the sales proceeds of the product produced in the possession by the first possessions corporation, and only the remainder is included in the numerator of the cost sharing formula for the first corporation. For example, assume that N corporation manufactures a component for sale to O corporation for $100 (a price which reflects prices in comparable uncontrolled transactions). Both N and O are affiliated possessions corporations. N has designated that component product as its possession product. O then incorporates that product into a second product which is sold to customers for $300 N and O must make separate cost sharing payments. The cost sharing payment of N corporation is determined by including $100 as possession sales, and the payment of O is determined by subtracting that $100 purchase price from the $300 received from customers. Thus, the possessions sales amount of O is $200. This rule is intended to prevent the double counting of the sales of a component produced by one possessions corporation and incorporated into another product by an affiliated possessions corporation.

Question 5: Are pre-TEFRA sales included in the cost sharing fraction?

Answer 5: No. Pre-TEFRA sales are sales of products produced by the possessions corporation and transferred to an affiliate prior to a possessions corporation's first taxable year beginning after December 31, 1982. Pre-TEFRA sales are not included in either the numerator or denominator of the cost sharing fraction. If the U.S. affiliate uses the FIFO method of costing inventory, the pre-TEFRA inventory will be treated as the first inventory sold by the U.S. affiliate during the first year in which section 936(h) applies. If the U.S. affiliate uses the LIFO method of costing inventory (either dollar-value or specific goods LIFO), pre-TEFRA inventor will be treated as inventory sold by the U.S. affiliate in the year in which the U.S. afiliate's LIFO layer containing pre-TEFRA LIFO inventory is liquidated.

Question 6: How are "possession sales" determined under the cost sharing formula if members of the affiliated group (other than the possessions corporation) include purchases of the possession product, X, in a dollar-value LIFO inventory pool (as provided under § 1.472–8)?

Answer 6: Possession sales may be determined by applying the revenue identification method provided under paragraph (b)(1) Question and Answer 18 of this section.

Question 7: Do possession sales include excise taxes paid by the possessions corporation when the product is sold for ultimate use or consumption in the possession?

Answer 7: No. The amount of excise taxes is excluded from both the numerator and denominator of the cost sharing fraction.

Question 8: How are "total sales" defined for purposes of the cost sharing fraction?

Answer 8: The term "total sales" means aggregate sales or other dispositions of products in the same product area as the possession product, less returns and allowances and less indirect taxes imposed on the production of the product, for the taxable year to persons who are not members of the affiliated group. The sales price to be used is the sales price received by the affiliated group from persons who are not members of the affiliated group.

Question 9: In computing that cost sharing payment, how are "total sales"

computed if the dollar-value LIFO inventory pool includes some products which are not included in the product area (determined under the 3-digit SIC code) on which the denominator of the cost sharing fraction is based?

Answer 9: In such case, the amount of the total sales within the product area to persons who are not members of the affiliated group by persons who are members of the affiliated group is determined by multiplying the total sales of the products within the dollar-value LIFO inventory pool by a fraction. The numerator of the fraction includes the dollar-value of purchases by members of the affiliated group (including the possessions corporation) of products within the product area made during the year, plus any added production costs (as defined in § 1.471–11(b), (c), and (d) but not including the costs of materials) incurred by the affiliates during the same period. The denominator of the fraction includes the dollar-value of purchases by members of the affiliated group (including the possessions corporation) of products within the dollar-value LIFO inventory pool made during the same period (including any production costs, as described above, incurred by the affiliate during the same period). For these purposes, purchases of a possession product are determined on the basis of the possessions corporation's cost for its inventory purposes.

Question 10: May a possessions corporation compute its income under the cost sharing method with respect to a possession product which the possessions corporation sells to a member of its affiliated group and which that member then leases to an unrelated person or uses in its own trade or business?

Answer 10: Yes, provided that an independent sales price for the possession product from comparable uncontrolled transactions can be determined in accordance with § 1.482–2(e)(2), and, provided further, that such member complies with the requirements of § 1.936–6(a)(2), question and answer 14. If, however, there is a comparable uncontrolled price for an integrated product and the possession product is a component product or end-product form thereof, the possessions corporation may, if such member complies with the requirements of § 1.936–6(a)(2), question and answer 14, compute its income under the cost sharing method with respect to such possession product. In that case, the cost sharing payment shall be computed under the following question and answer.

Question 11: How are possession sales and total sales to be determined for purposes of computing the cost sharing payment with respect to a possession product which the possessions corporation sells to a member of its affiliated group where that member then leases the possession product to unrelated persons or uses it in its own trade or business?

Answer 11: If the possessions corporation is entitled to compute its income from such sales of the possession product under the cost sharing method, both possession sales and total sales shall be determined as if the possession product had been sold by the affiliate to an unrelated person at the time the possession product was first leased or otherwise placed in service by the affiliate. The sales price on such deemed sale shall be equal to the independent sales price from comparable uncontrolled transactions determined in accordance with § 1.482–2(e)(2), if any. If the possession product is a component product or an end-product form for which there is no such independent sales price but there is a comparable uncontrolled price for the integrated product which includes the possession product, the deemed sales price of the possession product shall be computed under the rules of § 1.936–6(a)(2) question and answer 2. The full amount of income received under the lease shall be treated as income of (and taxed to) the affiliate and not the possessions corporation.

Question 12: When may a possessions corporation take into account in computing total sales under the cost sharing method products in the same product area as the possession product (other than the possession product itself) where such products are leased by members of the affiliated group to unrelated persons or used by any such member in its own trade or business?

Answer 12: For purposes of computing total sales under the cost sharing method, the possessions corporation may take into account products in the same product area as the possession product itself where such products are leased by members of the affiliated group to unrelated persons or used in the trade or business of any such member, but only if an independent sales price of such products from comparable uncontrolled transactions may be determined under § 1.482–2(e)(2). In such cases, the units of such products which are leased or otherwise used internally by members of the affiliated group may be treated as sold to unrelated persons for such independent sales price for purposes of computing total sales.

Question 13: Assuming that a possessions corporation is entitled to compute its income under the cost sharing method with respect to sales of a possession product to affiliates in cases where those affiliates lease units of the possession product to unrelated persons or use them internally, is the possessions corporation's income from the possession product any different than if the affiliates had sold the product to unrelated parties?

Answer 13: No.

Question 14: If a possessions corporation sells units of a possession product to a member of its affiliated group and that affiliate then leases those units to an unrelated person or uses the units in its own trade or business, what requirements must the affilate meet in order for the possessions corporation to be entitled to the benefits of the cost sharing method with respect to such units?

Answer 14: (i) For taxable years of the possessions corporation beginning on or before June 13, 1986, the affiliate need not meet any special requirements in order for the possessions corporation to be entitled to the beneifts of the cost sharing method with respect to such units. Thus, the affiliate's basis in such units shall be equal to the transfer price used for computing the possessions corporation's gross income with respect to such units under section 936(h)(5)(C)(i) (II), and the income derived by the affiliate from such lease or internal use shall be reported by the affiliate when and to the extent actually derived. The affiliate shall not be deemed to have sold such units to an unrelated party at the time they were first leased or otherwise placed in service for any purpose other than the computation of possession sales and total sales. A similar rule applies to other products in the same product area as the possession product which are sold by any member in its own trade or business and which the possessions corporation takes into account in computing total sales under the cost sharing method.

(ii) For taxable years of the possessions corporations beginning after June 13, 1986, a possessions corporations will not be entitled to the benefits of the cost sharing method with respect to units of the possession product which the possessions corporation sells to an affiliate where the affiliate then leases such units to an unrelated person or uses them in its own trade or business, unless the affiliate agrees to be treated for all tax purposes as having sold such

units to an unrelated party at the time they were first leased or otherwise placed in service by such affiliate. The affiliate must demonstrate such agreement by reporting its income from such units as if: (A) it had sold such units to an unrelated person at such time at a price equal to the price used to compute possessions sales under § 1.936–6(a)(2), question and answer 11; (B) it had immediately repurchased such units for the same price; and (C) its basis in such units for all subsequent purposes was equal to its cost basis from such deemed repurchase. For treatment of other products in the same product area as the possession product see § 1.936–6(a)(2), question and answer 12.

(iii) The principles contained in questions and answers 11, 12, 13, and 14 are illustrated by the following example:

Example. Possessions corporation S and its affiliate A are calendar year taxpayers. In 1985, S manufactures 100 units of possession product X. S sells 50 units of X to unrelated persons in arm's length transactions for $10 per unit. In applying the cost sharing method to determine the portion of its gross income from such sales which qualifies for the possessions tax credit, S determines that $8 of the $10 sales price may be taken into account. S sells the remaining 50 units of X to A, and A then leases such units to unrelated persons. In 1985, A also manufacturers 100 units of product Y, the only other product in the same product area as X manufactured or sold by any member of the affiliated group. A manufactured the 100 units of Y at a cost of $15 per unit, sold 50 units of Y to unrelated persons in arm's length transactions for $20 per unit, and leased the remaining 50 units of Y to unrelated persons.

S may compute its income under the cost sharing method with respect to the 50 units of X it sold to A because S can determine an independent sales price of X from comparable uncontrolled transactions under § 1.482–3(e)(2). For purposes of computing both possessions sales and total sales, the 50 units of X sold to A will be deemed to have been sold by A to an unrelated person for $10 per unit. The income of S qualifying for the possessions tax credit from the sale of those 50 units of X to A, and A's basis in those units, will both be determined using the $8 transfer price determined under section 936 (h)(5)(C)(i)(II). For purposes of computing total sales in the denominator of the cost sharing fraction, S may also take into account the 50 units of Y leased by A to unrelated persons, as if A had sold those units for $20 per unit. A's basis in those units of Y will continue to be its actual cost basis of $15 per unit.

If all of the above transactions had occurred in 1987, S would be entitled to compute its income under the cost sharing method with respect to the 50 units of X it sold to A only if A agreed to be treated for all tax purposes as if it had sold such units for $10 per unit, realized income on such deemed sale of $2 per unit, repurchased such units immediately for $10 per unit, and then leased such units, which would then have a $10 per unit basis in A's hands. For purposes of computing total sales, S would be entitled to take into account the 50 units of X leased by A to unrelated persons as if A had sold such units for $20 per unit.

(3) *Credits against cost sharing payments.*

Question 1: Is the cost of product area research paid or accrued by the possessions corporation in a taxable year creditable against the cost sharing payment?

Answer 1: Yes, if the cost of the product area research is paid or accrued solely by the possessions corporation. Thus, payments by the possessions corporation under cost sharing arrangements with, or royalties paid to, unrelated persons are so creditable. Amounts (such as royalties) paid directly or indirectly to, or on behalf of, related persons and amounts paid under any cost sharing agreements with related persons are not creditable against the cost sharing payment.

Question 2: Do royalties or other payments made by an affiliate of the possessions corporation to another member of the affiliated group reduce the cost sharing payment if such royalties or other payments are based, in part, on activity of the possessions corporation?

Answer 2: No. Payments made between affiliated corporations do not reduce the cost sharing payment. Thus, for example, if a possessions corporation sells a component to a foreign affiliate for incorporation by the foreign affiliate into an integrated product sold to unrelated persons, and the foreign affiliate pays a royalty to the U.S. parent of the possessions corporation based on the total value of the integrated product, the cost sharing payment of the possessions corporation is not reduced.

(4) *Computation of cost sharing payment.*

Question 1: S is a possessions corporation engaged in the manufacture and sale of four products (A, B, C, and D) all of which are classified under the same three-digit SIC code. S sells its production to a U.S. affiliate, P, which resells it to unrelated parties in the United States. P's third party sales of each of these products produced in whole or in part by S (computed as provided under paragraph (a)(2) of § 1.936–6) are $1 million or a total of $4 million for A, B, C, and D. P's other sales of products in the same SIC code are $3,000,000; and the defined worldwide product area research of the affiliated group is $350,000. How should S compute the cost sharing amount for products A, B, C, and D?

Answer 1: The cost sharing amount is computed separately for each product on Schedule P of Form 5735. S should use the following formula for each of the products A, B, C, and D:

$$\frac{\text{Sales to unrelated persons of possession product}}{\text{Total sales of products in SIC code}} \times \text{Worldwide product area research}$$

$$\frac{\$1{,}000{,}000}{\$7{,}000{,}000} \times \$350{,}000 = \$50{,}000$$

Question 2: The facts are the same as in question 1 except that S manufactures product D under a license from an unrelated person. S pays the unrelated party an annual license fee of $20,000. Thus, the worldwide product area research expense of the affiliated group is $370,000. How should the cost sharing payment be adjusted?

Answer 2: The cost sharing fee should be reduced by the $20,000 license fee made as a direct annual payment to a third party on account of product D. The cost sharing payment with respect to product D in this example will be adjusted as follows:

$$\left(\frac{\text{Sales to unrelated persons of possession product}}{\text{Total sales of products in SIC code}} \times \text{Worldwide product area research}\right) - \text{Amount paid by the possessions corporation to an unrelated party}$$

$$\left(\frac{\$1{,}000{,}000}{\$7{,}000{,}000} \times \$370{,}000\right) - \$20{,}000 = \$32{,}857$$

Question 3: The facts are the same as in question 1 except that S also manufactures and exports product E to a foreign affiliate, which resells it to unrelated persons for $1 million. S makes a separate election for its export

sales. How should S compute the cost sharing amount for product E?

Answer 3: The numerator of the cost sharing fraction is the aggregate sales or other dispositions by members of the affiliated group of the units of product E produced in whole or in part in the possession to persons who are not members of the affiliated group. The cost sharing amount for product E would be computed as follows:

$$\frac{\text{Export sales of E}}{\text{Total sales of products in SIC code (In this example, U.S. Sales of A, B, C, and D + export sales of E)}} \times \text{Worldwide product area research}$$

or

$$\frac{\$1,000,000}{(\$7,000,000+\$1,000,000)} \times \$350,000=\$43,750$$

Question 4: The facts are the same as in question 1, except that S also receives $10,000 in royalty income from unrelated persons for the licensing of certain manufacturing intangible property rights. What is the amount of the product area research that must be allocated in determining the cost sharing amount?

Answer 4: If the affiliated group receives royalty income from unrelated persons with respect to manufacturing intangibles in the same product area, then the product area research to be considered shall be first reduced by such royalty income. In this case, the amount of product area research to be used in determining S's cost sharing payment should be reduced by the $10,000 royalty payment received to $340,000.

Question 5: May a possessions corporation redetermine the amount of its required cost sharing payment after filing its tax return?

Answer 5: If after filing its tax return, a possessions corporation files an amended return, or if an adjustment is made on audit, either of which affects the amount of the cost sharing payment required, then a redetermination of the cost sharing payment must be made. See, however, section 936(h)(5)(C)(i)(III)(*a*) with respect to the increase in the cost sharing payment due to interest imposed under section 6601(a).

(5) *Effect of election under the cost sharing method.*

Question 1: What is the effect of the cost sharing method?

Answer 1: The cost sharing payment reduces the amount of deductions (and the amount of reductions in earnings and profits) otherwise allowable to the U.S. affiliates (other than tax-exempt affiliates) within the affiliated group as determined under section 936(h)(5)(C)(i)(I)(*b*) which have incurred research expenditures (as defined in § 1.936–6(a)(1), question and answer (3) in the same product area for which the cost sharing option is elected, during the taxable year in which the cost sharing payment accrues. If there are no such U.S. affiliates, the reductions with respect to deductions and earnings and profits, as the case may be, are made with respect to foreign affiliates within the same affiliated group which have incurred product area research expenditures in such product area attributable to a U.S. trade or business. If there are no affiliates which have incurred research expenditures in such product area, the reductions are then made with respect to any other U.S. affiliate and, if there is no such U.S. affiliate, then to any other foreign affiliate. The allocations of these reductions in each case shall be made in proportion to the gross income of the affiliates. In the case of foreign affiliates, the allocation shall be made in proportion to gross income attributable to the U.S. trade or business or worldwide gross income, as the case may be. With respect to each group above, the reduction of deductions shall be applied first to deductions under section 174, then to deductions under section 162, and finally to any other deductions on a pro rata basis.

Question 2: For purposes of estimated tax payments, when is the cost sharing amount deemed to accrue?

Answer 2: The cost sharing amount is deemed to accrue to the appropriate affiliate on the last day of the taxable year of each such affiliate in which or with which the taxable year of the possessions corporation ends.

Question 3: If the cost sharing method is elected and the year of accrual of the cost sharing payment to the appropriate affiliate (described in question and answer 1 of this paragraph (a)(5)) differs from the year of actual payment by the possessions corporation, in what year are the deductions of the recipients reduced?

Answer 3: In the year the cost sharing payment has accrued.

Question 4: What is the treatment of income from intangibles under the cost sharing method?

Answer 4: Under the cost sharing method, a possessions corporation is treated as the owner, for purposes of obtaining a return thereon, of manufacturing intangibles related to a possession product. The term "manufacturing intangible" means any patent, invention, formula, process, design, pattern, or know-how. The possessions corporation will not be treated as the owner, for purposes of obtaining a return thereon, of any manufacturing intangibles related to a component product produced by an affiliated corporation and transferred to the possessions corporation for incorporation into the possession product, except in the case that the possession product is treated as including such component product for all purposes of section 936(h)(5). Further, the possessions corporation will not be treated as the owner, for purposes of obtaining a return thereon, of any marketing intangibles except "covered intangibles." (See § 1.936–6(c).)

Question 5: If the cost sharing option is elected, is it necessary for the possessions corporation to be the legal owner of the manufacturing intangibles related to the possession product in order for the possessions corporation to receive a full return with respect to such intangibles?

Answer 5: No. There is no requirement that manufacturing intangibles be owned by the possessions corporation.

Question 6: How is income attributable to marketing intangibles treated under the cost sharing method?

Answer 6: Except in the case of "covered intangibles" (see § 1.936–6(c)), the possessions corporation is not treated as the owner of any marketing intangibles, and income attributable to marketing intangible of the possessions corporation will be allocated to the possessions corporation's U.S. shareholders with the proration of income based on shareholdings. If a shareholder of the possessions corporation is a foreign, person or is otherwise tax exempt, the possessions corporation is taxable on that shareholder's pro rata amount of the intangible property income. If the possessions corporation is a corporation any class of the stock of which is regularly traded on an established securities market, then the income attributable to marketing intangibles will be taxable to the possessions corporation rather than the corporation's U.S. shareholders.

Question 7: What is the source of the intangible property income described in question and answer 6?

Answer 7: The intangible property income is U.S. source whether taxed to the U.S. shareholder or taxed to the possessions corporation and section 863 (b) does not apply for this purpose. However, such intangible property income, if treated as income of the

possessions corporation, does not enter into the calculation of the 80-percent possession source test or the 65-percent active trade or business test.

Question 8: May marketing intangible income, if any, be allocated to the possessions corporation with respect to custom-made products?

Answer 8: No. If the cost sharing option is elected, then income attributable to marketing intangibles (other than "covered intangibles" described in § 1.936–6(c)) will be taxed as discussed in questions and answers 6 and 7 of paragraph (a)(5) of this section. It is immaterial whether the product is custom-made.

Question 9: In order to sell a phamaceutical product in the United States, a New Drug Application ("NDA") for the product must be approved by the U.S. Food and Drug Administration. Is an NDA considered a manufacturing or marketing intangible for purposes of the allocation of income under the cost sharing method?

Answer 9: A manufacturing intangible.

Question 10: Can a copyright be, in whole or in part, a manufacturing intangible for purposes of the allocation of income under the cost sharing method?

Answer 10: In general, a copyright is a marketing intangible. See section 936(h)(3)(B)(ii). However, copyrights may be treated either as manufacturing intangibles or nonmanufacturing intangibles (or as partly each) depending upon the function or the use of the copyright. If the copyright is used in manufacturing, it will be treated as a manufacturing intangible; but if it is used in marketing, even if it is also classified as know-how, it will be treated as a marketing intangible.

Question 11: If the cost sharing option is elected and a patent is related to the product produced by the possessions corporation, does the return to the possessions corporation with respect to the manufacturing intangible include the make, use, and sell elements of the patent?

Answer 11: Yes. A patent confers an exclusive right for 17 years to sell a product covered by the patent. During this period, the return to the possessions corporation includes the make, use and sell elements of the patent.

Question 12: For purposes of the cost sharing option, may a safe haven rule be applied to determine the amount of marketing intangible income?

Answer 12: No. The amount of marketing intangible income is determined on the basis of all relevant facts and circumstances. The section 482 regulations will continue to apply except to the extent modified by the election. Rev. Proc. 63–10 and Rev. Proc. 68–22 do not apply for this purpose.

Question 13: If a product covered by the cost sharing election is sold by a possessions corporation to an affiliated corporation for resale to an unrelated party, may the resale price method under section 482 be used to determine the intercompany price of the possessions corporation?

Answer 13: In general, the resale price method may be used if (a) no comparable uncontrolled price for the product exists, and (b) the affiliated corporation does not add a substantial amount of value to the product by manufacturing or by the provision of services which are reflected in the sales price of the product to the customer. The possessions corporation will not be denied use of the resale price method for purposes of such inter-company pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

Question 14: If a possessions corporation makes the cost sharing election and uses the cost-plus method under section 482 to determine the arm's-length price of a possession product, will the cost base include the cost of materials which are subject to processing or which are components in the possession product?

Answer 14: A taxpayer may include the cost of materials in the cost base if it is appropriate under the regulations under § 1.482–2(e)(4).

Question 15: If the possessions corporation computes its income with respect to a product under the cost sharing method, and the price of the product is determined under the cost-plus method under section 482, does the cost base used in computing cost-plus under section 482 include the amount of the cost sharing payment?

Answer 15: The amount of the cost sharing payment is included in the cost base. However, no profit with respect to the cost sharing payment will be allowed.

Question 16: If a member of the affiliated group transfers to a possessions corporation a component which is incorporated into a possession product, how will the transfer price for the component be determined?

Answer 16: The transfer price for the component will be determined under section 482, and as follows. If the possession product is treated as not including such component for purposes of section 936(h)(5), the transfer price paid for the component will include a return on all intangibles related to the component product. If the possession product is treated as including such component for purposes of section 936(h)(5), then the transfer price paid for the component by the possessions corporation will not include a return on any manufacturing intangible related to the component product, and the possessions corporation will obtain the return on the manufacturing intangibles associated with the component.

Question 17: If the possessions corporation computes its income with respect to a product under the cost sharing method, with respect to which units of the product shall the possessions corporation be treated as owning intangible property as a result of having made the cost sharing election?

Answer 17: The possessions corporation shall not be treated as owning intangible property, as a result of having made the cost sharing election, with respect to any units of a possession product which were not taken into account by the possessions corporation in applying the significant business presence test for the current taxable year or for any prior taxable year in which the possessions corporation also had a significant business presence in the possession with respect to such product.

(b) *Profit split option—(1) Computation of combined taxable income.*

Question 1: In determining combined taxable income from sales of a possession product, how are the allocations and apportionments of expenses, losses, and other deductions to be determined?

Answer 1: (i) Expenses, losses, and other deductions are to be allocated and apportioned on a "fully-loaded" basis under § 1.861–8 to the combined gross income of the possessions corporation and other members of the affiliated group (other than foreign affiliates). For purposes of the profit split option, the term "affiliated group" is defined the same as under § 1.936–6 (a)(1) question and answer 2. The amount of research, development, and experimental expenses allocated and apportioned to combined gross income is to be determined under § 1.861–8(e)(3). The amount of research, development and experimental expenses and related deductions (such as royalties paid or accrued with respect to manufacturing intangibles by the possessions corporation or other domestic members of the affiliated group to unrelated persons or to foreign affiliates) allocated and apportioned to combined gross income shall in no event be less than the amount of the cost sharing payment that would have been required under the rules set forth in section

936(h)(5)(C)(i)(II) and paragraph (a) of this section if the cost sharing option had been elected. Other expenses which are subject to § 1.861–8(e) are to be allocated and apportioned in accordance with that section. For example, interest expense (including payments made with respect to bonds issued by the Puerto Rican Industrial, Medical and Environmental Control Facilities Authority (AFICA)) is to be allocated and apportioned under § 1.861–8(e)(2). With the exception of marketing and distribution expenses discussed below, the other remaining expenses which are definitely related to a class of gross income shall be allocated to that class of gross income and shall be apportioned on the basis of any reasonable method, as described in § 1.861–8 (b)(3) and (c)(1). Examples of such methods may include, but are not limited to, those specified in § 1.861–8(c)(1) (i) through (vi).

(ii) The class of gross income to which marketing and distribution expenses relate and shall be allocated is generally to be defined by the same "product area" as is determined for the relevant research, development, and experimental expenses (*i.e.*, the appropriate 3-digit SIC code), but shall include only gross income generated or reasonably expected to be generated from the geographic area or areas to which the expenses relate. It shall be presumed that marketing and distribution expenses relate to all product sales within the same product area. If, however, it can be established that any of these expenses are separately identifiable expenses, such as advertising, and relate, directly or indirectly, solely to a specific product or a specific group of products, such expenses shall be allocated to the class of gross income defined by the specific product or group of products. Thus, advertising and other separately identifiable marketing expenses which relate specifically and exclusively to a particular product must be allocated entirely to the gross income from that product, even though the taxpayer or other members of an affiliated group which includes the taxpayer produce and market other products in the same 3-digit SIC code classification. The mere display of a company logo or mention of a company name solely in the context of identifying the manufacturer shall not prevent an advertisement from relating specifically and exclusively to a particular product or group of products.

(iii) If marketing and distribution expenses are allocated to a class of gross income which consists both of income from sales of possession products (the statutory grouping) and other income such as from sale by U.S. affiliates of products not produced in the possession (the residual grouping), then these marketing and distribution expenses shall be apportioned on a "fully loaded" basis which reflects, to a reasonably close extent, the factual relationship between these deductions and the statutory and residual groupings of gross income. Apportionment methods based upon comparisons of amounts incurred before ultimate sale of a product (including apportionment on a comparison of costs of goods sold, other expenses incurred, or other comparisons set forth in § 1.861–8 (c)(1)(v), such as time spent) are not on a "fully-loaded" basis and do not reflect this required factual relationship. These deductions shall be apportioned on a basis of comparison of the amount of gross sales or receipts or another method if it is established that such method similarly reflects the required factual relationship. Thus, for example, a comparison of units sold may be used only where the units are of the same or similar value and are, thus, in fact comparable.

(iv) The rules for allocation and apportionment of marketing and distribution expenses may be illustrated by the following examples:

Example (1). Assume that possessions corporation A manufacturers prescription pharmaceutical product #1 for resale by P, its U.S. parent corporation, in the United States. Additionally, assume that P manufactures prescription pharmaceutical products #2 and #3 in the United States for sale there. Further, assume that all three products are within the same product area, and that marketing and distribution expenses are internally divided by P among the three products on the basis of time spent by sales persons of P on marketing of the three products, as follows:

Product #1	50X
Product #2	80X
Product #3	110X
Total	240X

These expenses of 240X are allocated to gross income generated by all three products and shall be apportioned on the basis of gross sales or receipts of product #1 as compared to products #2 and #3 or another method which similarly reflects the factual relationship between these expenses and gross income derived from product #1 and products #2 and #3. Thus, if a sales method were used and sales of product #1 accounted for one-third of sales receipts from the three products, 80X (240 ÷ 3) of marketing and distribution expenses would be apportioned to the combined gross income from product #1.

Example (2). Corporation B produces and sells Brand W whiskey, in the United States. B's subsidiary, S, which is a possessions corporation, produces soft drink extract in Puerto Rico which it sells to independent bottlers to produce Brand S soft drinks for sale in the United States. Corporation B's advertisements and other promotional materials for Brand W whiskey make no reference to Brand S soft drinks (or any other Corporation B products), and Brand S soft drink advertisements and other promotional materials make no reference to Brand W whiskey (or any other corporation B products). For purposes of section 936(h), the advertising and other promotional expenses for Brand W whiskey must be allocated entirely to the gross income from sales of Brand W whiskey and the advertising and other promotional expenses for Brand S soft drink must be allocated entirely to the gross income from the sales of soft drink extract, notwithstanding the fact that whiskey and soft drink extract are both included in SIC code 208. A similar result would apply, for example, to separately identifiable advertising and other marketing expenses which relate specifically and exclusively to one or the other of the following pairs of products: chewing gum and granulated sugar (SIC code 206); canned tuna fish and freeze-dried coffee (SIC code 209); children's underwear and ladies' brassieres (SIC code 234); aspirin tablets and prescription antibiotic tablets (SIC code 283); floor wax and perfume (SIC code 284); adhesives and inks (SIC code 289); semi-conductors and cathode-ray tubes (SIC code 367); batteries and extension cords (SIC code 369); bandages and dental supplies (SIC code 384); stainless steel flatware and jewelry parts (SIC code 391); children's toys and sporting goods (SIC code 394); hair curlers and zippers (SIC code 396); and paint brushes and linoleum titles (SIC code 399).

Example (3). Assume the same facts as in Example (1) and that possessions corporation A also manufactures aspirin, a non-prescription product, for resale by its U.S. parent corporation, P. Further, assume that the advertising and separately identifiable marketing expenses which relate specifically and exclusively to aspirin sales total $100 and that these expenses are allocable solely to gross income derived from aspirin sales. The sales method continues to be used to apportion the marketing and distribution expenses related, directly or indirectly, to products #1, #2, and #3, and the apportionment of such expenses to product #1 for purposes of determining combined taxable income from product #1 will remain as stated in Example (1). None of the advertising and other separately identifiable marketing expenses which relate specifically and exclusively to aspirin will be taken into account in allocating and apportioning the marketing and distribution expenses relating to the gross income attributable to products #1, #2, and #3. Gross income attributable to aspirin will be considered as a separate class of gross income, and all the advertising and separately identifiable marketing expenses which relate specifically and exclusively to aspirin sales of $100 will be allocated to the class of gross income derived from aspirin sales. Similarly, none of the

marketing and distribution expenses, directly or indirectly, related solely to the group of products #1, #2, and #3 will be taken into account in determining the combined taxable income from aspirin sales. the remaining marketing and distribution expenses which do not, directly or indirectly, relate solely to any specific product or group of products (*e.g.*, the salaries of a Vice-President of Marketing who has responsibility for marketing all products and his staff) shall be allocated and apportioned on the basis of the gross receipts from the sales of all of the products (or a similar method) in determining combined taxable income of any product.

Question 2: How may the allocation and apportionment of expenses to combined gross income be verified?

Answer 2: Substantiation of the allocation and apportionment of expenses will be required upon audit of the possessions corporation and affiliates. Detailed substantiation may be necessary, particularly where the entities are engaged in multiple lines of business involving distinct product areas. Sources of substantiation may include certified financial reports. Form 10–K's, annual reports, internal production reports, product line assembly work papers, and other relevant materials. In this regard, *see* § 1.861–8(f)(5).

Question 3: Does section 936(h) override the moratorium provided by section 223 of the Economic Recovery Tax Act of 1981 and any subsequent similar moratorium?

Answer 3: Yes. Thus, the allocation and apportionment of product area research described in question and answer 1 must be made without regard to the moratorium.

Question 4: Is the cost of samples treated as a marketing expense?

Answer 4: Yes. The cost of producing samples will be treated as a marketing expense and not as inventoriable costs for purposes of determining combined taxable income (and compliance with the significant business presence test). However, for taxable years beginning prior to January 1, 1986, the cost of producing samples may be treated as either a marketing expense or as inventoriable costs.

Question 5: If a possessions corporation uses the profit split method to determine its taxable income from sales of a product, how does it determine its gross income for purposes of the 80-percent possession source test and the 65-percent active trade or business test of section 936(a)(2)?

Answer 5: One-half of the deductions of the affiliated group (other than foreign affiliates) which are used in determining the combined taxable income from sales of the product are added to the portion of the combined taxable income allocated to the possessions corporation in order to determine the possessions corporation's gross income from sales of such product.

Question 6: How will income from intangibles related to a possession product be treated under the profit split method?

Answer 6: Combined taxable income of the possessions corporation and affiliates from the sale of the possession product will include income attributable to all intangibles, including both manufacturing and marketing intangibles, associated with the product.

Question 7: Can a possessions corporation apply the profit split option to a possession product if no U.S. affiliates derive income from the sale of the possession product?

Answer 7: Yes.

Question 8: With respect to the factual situation discussed in question and answer 7 how is combined taxable income computed?

Answer 8: The profit split option is applied to the taxable income of the possessions corporation from sales of the possession product to foreign affiliates and unrelated persons. Fifty percent of that income is allocated to the possessions corporation, and the remainder is allocated to the appropriate affiliates as described in question and answer 13 of this paragraph (b)(1).

Question 9: May a possessions corporation compute its income under the profit split method with respect to units of a possession product which it sells to a U.S. affiliate if the U.S. affiliate leases such units to unrelated persons or to foreign affiliates or uses such units in its own trade or business?

Answer 9: Yes, provided that an independent sales price for the possesion product from comparable uncontrolled transactions can be determined in accordance with § 1.482–2 (e)(2). If, however, there is a comparable uncontrolled price for an integrated product and the possession product is a component product or end-product form thereof, the possessions corporation may compute its income under the profit split method with respect to such units. In either case, the possessions corporation shall compute combined taxable income with respect to such units under the following question and answer.

Question 10: If a possessions corporation is entitled to use the profit split method in the situation described in Question 9, how should it compute combined taxable income with respect to such units?

Answer 10: Combined taxable income shall be computed as if the U.S. affiliate had sold the units to an unrelated person (or to a foreign affiliate) at the time the units were first leased or otherwise placed in service by the U.S. affiliate. The sales price on such deemed sale shall be equal to the independent sales price from comparable uncontrolled transactions determined in accordance with § 1.482–2(e)(2), if any. If the possession product is a component product or an end-product form for which there is no such independent sales price but there is a comparable uncontrolled price for the integrated product which includes the possession product, the deemed sales price of the possession product shall be computed under the rules of § 1.936–6(b)(1) question and answer 12. The full amount of income received under the lease shall be treated as income of (and taxed to) the U.S. affiliate and not the possessions corporation.

Question 11: In the situation described in question 9, how does the U.S. affiliate determine its basis in such units for purposes of computing depreciation and similar items?

Answer 11: The U.S. affiliate shall be treated, for purposes of computing its basis in such units, as if it had repurchased such units immediately following the deemed sales described in question 10, at the same independent sales price, or other price computed with respect to a component product or end-product form referred to in that question.

The principles of questions and answers 10 and 11 are illustrated by the following example:

Example: Possessions corporation S manufactures 100 units of possession product X. S sells 50 units of X to an unrelated person in an arm's length transaction for $10 per unit. S sells the remaining 50 units to its U.S. affiliate, A, which leases such units to unrelated persons. The combined taxable income for the 100 units of X is computed below on the basis of the given production, sales, and cost data:

Sales:	
1. Total sales by S to unrelated persons (50 x $10)	$500
2. Total deemed sales by A to unrelated persons (50 x $10)	500
3. Total gross receipts (line 1 plus line 2)	1,000
Total costs:	
4. Material costs	200
5. Production costs	300
6. Research expenses	0
7. Other expenses	100
8. Total (add lines 4 through 7)	600

Combined taxable income attributable to the 100 units of X:	
9. Combined taxable income (line 3 minus line 8)	400
10. Share of combined taxable income apportioned to S (50% of line 9)	200
11. Share of combined taxable income apportioned to A (line 9 minus line 10)	200
A's basis in 50 units of X leased by it to unrelated persons:	
12. 50 units times $10 deemed repurchase price	500

Subsequent leasing income is entirely taxed to A.

Question 12: If the possession product is a component product or an end-product form, how is the combined taxable income for such product to be determined?

Answer 12: (i) In computing combined taxable income, the sales price of the component product or end-product form is determined as follows. With respect to a component product, an independent sales price from comparable uncontrolled transactions must be used if such price can be determined in accordance with § 1.482–2(e)(2). If an independent sales price of the component product from comparable uncontrolled transactions cannot be determined, then the possessions corporation must treat the sales price for the component product as equal to the same proportion of the third party sales price of the integrated product which the production costs attributable to the component product bear to the total production costs for the integrated product. Production costs will be the sum of direct and indirect production costs as defined in § 1.936–5(b)(4).

(ii) With respect to an end-product form, the sales price of the end-product form is equal to the difference between the third party sales price of the integrated product and the independent sales price of the excluded component(s), from comparable uncontrolled transactions, if such price can be determined under § 1.482–2(e)(2). If an independent sales price of the excluded component(s) from uncontrolled transactions cannot be determined, then the possessions corporation must use the production cost ratio method described above to determine the sales price of the excluded component(s) (*i.e.*, the same proportion of the third party sales price of the integrated product which the production costs attributable to the excluded component(s) bear to the total production costs for the integrated product). If the production cost ratio is used, the sales price of the end-product form is the difference between the third party sales price of the integrated product and the sales price of the excluded component(s) determined using the production cost ratio. The possessions corporation will determine its costs (other than costs incurred for materials purchased from a U.S. affiliate) attributable to the possession product and its expenses allocable and apportionable to the possession product under § 1.861–8, as described in question and answer 1 of this paragraph (b)(1).

Each member of the affiliated group that is a United States person, other than the possessions corporation, shall determine its costs (other than costs incurred for materials purchased from a U.S. affiliate) attributable to the possession product, and its expenses allocable and apportionable to the integrated product under § 1.861–8, as described in question and answer 1 of this paragraph (b)(1). Each such United States person, (other than the possessions corporation) shall apportion to the possession product, on the basis of the ratio of the production costs for the possession product to the total production costs for the integrated product, the expenses that such affiliate allocated and apportioned to the integrated product. Production costs will be the sum of direct and indirect production costs as defined in question and answer 1 of § 1.936–5(b)(4).

Example: A possessions corporation, S, is engaged in the manufacture of microprocessors. S obtains a component from a U.S. affiliate, O. S sells its production to another U.S. affiliate, P, which incorporates the microprocessors into central processing units (CPUs). P transfers the CPUs to a U.S. affiliate, Q, which incorporates them into computers for sale to unrelated customers. S chooses to define the possession product as the CPUs. The combined taxable income for the CPUs is computed below on the basis of the given production, sales, and cost data:

Production costs (excluding costs of materials):	
1. O's costs for the component	75
2. S's costs for the microprocessors	400
3. P's costs for the CPUs	125
4. Q's costs for the computers	150
5. Total (add lines 1 through 4)	750
6. Combined production costs for the CPUs (add lines 1 through 3)	600
7. Ratio of production costs for the CPUs (the possession product) to the production costs for the computers (the integrated product)	0.8
Sales:	
8. Total sales by Q to unrelated customers and foreign affiliates of computers containing microprocessors produced by S	5,000
9. Sales value of the CPUs (determined under the comparable uncontrolled price method of § 1.936–6(a)(2) question and answer 2)	4,200
Total costs of S (excluding costs of materials obtained from U.S. affiliates):	
10. Production costs of S (enter from line 2)	400
11. Materials costs (excluding materials obtained from U.S. affiliates)	100
12. General and administrative expenses	250
13. Other expenses (interest, etc)	250
14. Total (add lines 10 through 13)	1,000
Research expenses of the affiliated group allocable and apportionable to the CPUs:	
15. Total sales in the 3-digit SIC code	8,000
16. Possession sales (enter from line 9)	4,200
17. Cost sharing fraction (divide line 16 by line 15)	0.525
18. Research expenses incurred by the affiliated group in the 3-digit SIC code	600
19. Cost sharing amount (multiply line 17 by line 18)	315
20. Research of the affiliated group (other than foreign affiliates allocable and apportionable under § 1.861–8(e)(3) to the computers (the integrated product)	350
21. Research apportionable to the CPUs (multiply line 20 by line 7)	280
22. Enter the greater of line 19 or line 21	315
Other expenses of the affiliated group (other than S and foreign affiliates) allocable or apportionable to the CPUs:	
23. Marketing general and administrative, interest and other expenses of the affiliated group (other than S and foreign affiliates) which are allocable and apportionable to the computers or to any components thereof	500
24. Expenses apportionable to the CPUs (multiply line 23 by line 7)	400
Combined taxable income attributable to the CPUs:	
25. Combined taxable income (line 9 minus lines 1, 3, 14, 22 and 24)	2285
26. Share of combined taxable income apportioned to S (50% of line 25)	1142.5

Share of combined taxable income apportioned to U.S. affiliates of S:	
27. Adjustment to research expense (Enter the greater of zero or line 19 minus line 21)	35
28. Adjusted combined taxable income (line 27 plus line 25)	2320
29. Share of combined taxable income apportioned to U.S. affiliates of S (line 28 less line 26)	1177.5

Question 13: If the profit split option is elected, how is the portion of combined taxable income not allocated to the possessions corporation to be treated?

Answer 13: The income shall be allocated (i) to U.S. affiliates (other than tax exempt affiliates) within the group (as determined under section 482) which derive income with respect to the product produced in whole or in part in the possession; or (ii) if there are no such U.S. affiliates, to U.S. affiliates (other than tax-exempt affiliates) which derive income from the active conduct of a trade or business in the same product area as the possession product; or (iii) if there are no such affiliates as described in (i) or (ii) above, then to other U.S. affiliates (other than tax-exempt affiliates); or (iv) if there are no U.S. affiliates (other than tax-exempt affiliates), to foreign affiliates which derive income from the active conduct of a U.S. trade or business in the same product area as the possession product (or, if the foreign members are resident in a country with which the U.S. has an income tax convention, then to those foreign members which have a permanent establishment in the United States which derives income in the same area as the possession product); or (v) if there are no affiliates described in (i) through (iv) above, then to all other affiliates. The allocations made under (i) shall be made on the basis of the relative gross income derived by each such affiliate with respect to the product produced in whole or in part in the possession, the allocations made under (ii) and (iv) above shall be made on the basis of the relative gross income derived by each such affiliate from the active conduct of the trade or business in the same product area, and allocations made under (iii) and (v) above shall be made on the basis of the relative total gross income of each such affiliate before allocating income under this section. Income allocated to affiliates shall be treated as U.S. source and section 863(b) does not apply for this purpose. For purposes of determining an affiliate's estimated tax liability with respect to income thus allocated, the income shall be deemed to be received on the last day of the taxable year of each such affiliate in which or with which the taxable year of the possessions corporation ends.

Question 14: What is the source of the portion of combined taxable income allocated to the possessions coproration?

Answer 14: Income allocated to the possessions corporation shall be treated as possession source income and as derived from the active conduct of a trade or business within the possession.

Question 15: How is the profit split option to be applied to properly account for costs incurred in a year with respect to products which are sold by the possessions corporation to a U.S. affiliate during such year, but are not resold by the U.S. affiliate to persons who are not members of the affiliated group or to foreign affiliates until a later year?

Answer 15: The rules under § 1.994–1(c)(5) are to be applied. Incomplete transactions will not be taken into consideration in computing combined taxable income. Thus, for example, if in 1983, A, a possessions corporation, sells units of a product with a cost to A of $5000 to B corporation, its U.S. affiliate, which use the dollar-value LIFO method of costing inventory, and B sells units with a cost of $4000 (representing A's cost) to C corporation, a foreign affiliate, only $4000 of such costs shall be taken into consideration in computing the combined taxable income of the possessions corporation and U.S. affiliates for 1983. If a specific goods LIFO inventory method is used by B, the determination of whether A's goods remain in B's inventory shall be based on whether B's specific goods LIFO grouping has experienced an increment or decrement for the year on the specific LIFO cost of such units, rather than on an average unit cost of such units. If the FIFO method of costing inventory is used by B, transfers may be based on the cost of the specific units transferred or on the average unit production cost of the units transferred, but in each case a FIFO flow assumption shall be used to identify the units transferred. For a determination of which goods are sold by taxpayers using the LIFO method, see question and answer 19.

Question 16: If a possessions corporation purchases materials from an affiliate and computes combined taxable income for a possession product which includes such materials, how are those materials to be treated in the possessions corporation's inventory?

Answer 16: The cost of those materials is considered to be equal to the affiliate's cost using the affiliate's method of costing inventory.

Question 17: If the possessions corporation uses the FIFO method of costing inventory and the U.S. affiliate uses the LIFO method of costing inventory, or *vice versa*, what method of costing inventory should be used in computing combined taxable income?

Answer 17: The transferor corporation's method of costing inventory determines the cost of inventory for purposes of combined taxable income while the transferee corporation's method of costing inventory determines the flow. Assume, for example, that X corporation, a possessions corporation, using the FIFO method of costing inventory purchases materials from Y corporation, U.S. affiliate, also using the FIFO method. X corporation produces a product which it transfers to Z corporation, another U.S. affiliate using the LIFO method. Assume also that the final product satisfies the significant business presence test. Under the facts, the cost of the materials purchased by X from Y is Y's FIFO cost. The costs of the inventory transferred by X to Z are determined under X's FIFO method of accounting as is the flow of the inventory from X to Z. The costs added by Z are determined under Z's LIFO method of inventory, as is the flow of the inventory from Z to unrelated persons or foreign affiliates.

Question 18: How are the costs of a possession product and the revenues derived from the sale of a possession product determined if the U.S. affiliate includes purchases of the possessions product in a dollar-value LIFO inventory pool (as provided under § 1.472–8)?

Answer 18: The following method will be accepted in determining the revenues derived from the sale of a possession product and the costs of a possession product if the U.S. affiliate includes purchases of the possession product in a dollar-value LIFO inventory pool. The rules apply solely for the cost sharing and profit split options under section 936(h).

(i) *Revenue Identification:* The identification of revenues derived from sales of a possession product must generally be made on a specific identification basis. The particular method employed by a taxpayer for valuing its inventory will have no impact on the determination of what units are sold or how much revenue is derived from such sales. Thus, if a U.S. affiliate sells both item A (a possession product) and item B (a non-possession product), the actual sales revenues

received by the U.S. affiliate from item A sales would constitute possession product revenue for purposes of the profit split option and possession sales for purposes of the cost sharing option regardless of whether the U.S. affiliate values its inventories on the FIFO or the LIFO method. In instances where sales of item A (*i.e.*, the possession product) cannot be determined by use of specific identification (for example, in cases where items A and B are identical except that one is produced in the possession (item A) and the other (item B) is produced outside of the possession and it is not possible to segregate these items in the hands of the U.S. affiliate), it will be necessary to identify the portion of the combined sales of items A and B (which together can be identified on a specific identification basis) which is attributed to item A sales and the portion which is attributed to item B sales. The determination of the portion of aggregated sales attributable to item A and item B is independent of the LIFO method used to determine the cost of such sales and may be made under the following approach. A taxpayer may, for purposes of this section of the regulations, use the relative purchases (in units) of items A and B by the U.S. affiliate during the taxable year (or other appropriate measuring period such as the period during the taxable year used to determine current-year costs, *i.e.*, earliest acquisitions period, latest acquisitions period, etc.) in determining the ratio to apply against the combined items A and B sales revenue. If the sales exceed current purchases, the taxpayer can use a FIFO unit approach which identifies actual unit sales on a first-in, first-out basis. Revenue determination where specific identification is not possible is illustrated by the following example:

Example. At the end of year 1, there are 600 units of combined items A and B which are to be allocated between A and B on the basis of annual purchases of A and B units during year 1. During year 1, 1,000 units of item A, a possession product, and 2,000 units of item B, a non-possession product, were purchased. Thus, the 600 units in year 1 ending inventory are allocated 200 (i.e. ⅓) to item A units and 400 (i.e. ⅔) to item B units based on the relative purchases of A (1,000) and B (2,000) in year 1. These units appear as beginning inventory in year 2.

In year 2, 1,500 units of item A are purchased and 1,500 units of item B are purchased. However, 3,300 units of items A and B in the aggregate are sold for $600,000. The relative proportion of the $600,000 attributable to item A and to item B sales would be determined as follows:

Year 2 sales	Item A	Item B
Unit sales from opening inventory	200	400
Unit sale from current-year purchases	1,350	1,350
Total unit sales (3,300)	1,550	1,750
Percentage	47	53

Revenues from item A sales ..... 281,818 $\left\{\$600{,}000 \times \frac{1550}{3300}\right\}$

Revenues from item B sales ..... $318,182 $\left\{\$600{,}000 \times \frac{1750}{3300}\right\}$

Year 2 Closing Inventory	Units
Item A	150
Item B	150

Thus, revenues from Item A sales for purposes of computing possession sales for the cost sharing option and revenues for the profit split option are $281,818.

(ii) *Cost Identification:* The determination of the cost of possession product sales by the U.S. affiliate must be based on the LIFO inventory method of the U.S. affiliate. The LIFO cost of possession product sales will, for purposes of this section of the regulations, be determined by maintaining a separate LIFO cost for possession products in a taxpayer's opening and closing LIFO inventory and using this cost to calculate an independent cost of possession product sales. This separate LIFO cost for possession products in the LIFO pool of a taxpayer is to be determined as follows:

(A) Determine the base-year cost of possession products in ending inventory in a LIFO pool.

(B) Determine the percentage of the base-year cost of possession products in the pool as compared to the total base-year cost of all items in the pool.

(C) Multiply the percentage determined in step (B) above by the ending LIFO inventory value of the pool to determine the deemed LIFO cost attributable to possession products in the pool.

(B) Subtract the LIFO cost of possession products in ending inventory in the pool (as calculated in step (c) above) from the sum of: (1) possession product purchases for the year, plus (2) the portion of the opening LIFO inventory value of the pool attributed to possession products (*i.e.*, the result obtained in step (c) above for the prior year). The number determined by this calculation is the LIFO cost of possession product sales from the taxpayer's LIFO pool.

Example: Assume that item A is a possession product and item B is a non-possession product and also assume the inventory and purchases with respect to the LIFO pool as provided below:

YEAR 1 ENDING INVENTORY

	No. of units	Base-year cost/unit	Base-year cost	Percent
Item A	100	$2.00	$200	20
Item B	200	4.00	800	80

YEAR 1—LIFO VALUE

	Base-year cost	Index	LIFO cost
Increment layer 2	$300	3.0	$900
Increment layer 1	400	2.0	800
Base layer	300	1.0	300
Pool total	$1,000		$2,000

YEAR 1—LIFO VALUE PER ITEM

	Base-year cost	LIFO value
Total pool	$1,000	$2,000
Item A	200	400
Item B	800	1,600

YEAR 2—PURCHASES

	Total purchases
Item A	$6,000
Item B	4,000

YEAR 2—ENDING INVENTORY

	No. of units	Base-year cost/unit	Base-year cost	Percent
Item A	200	$2.00	$400	50
Item B	100	4.00	400	50

YEAR 2—LIFO VALUE

	Base-year cost	Index	LIFO cost
Increment layer 2	$100	3.0	$300
Increment layer 1	400	2.0	800
Base layer	$300	1.0	300
Pool total	800		1,400

The year 2 LIFO cost of possession product A sales will be calculated as follows:

(1) Base-year cost of item in year 2 ending inventory=$400

(2) Percentage of item A base-year cost to total base-year cost ($400 ÷ $800) = 50%

(3) LIFO value of item A ($1,400 × 50%) = $700

(4) LIFO cost of item A sales is determined by adding to the beginning inventory in year 2 the purchases of item A in year 2 and subtracting from this amount the ending inventory in year 2 ($400 + $6000 − $700 = $5700). The beginning inventory in year 2 is determined by multiplying the LIFO cost of the year 1 ending inventory by a percentage of item A base year cost to the total base-year cost in year 1. The ending inventory in year 2 is determined under (3) above.

Question 19: If a possession product is purchased from a possessions corporation by a U.S. affiliate using the dollar-value LIFO method of costing its inventory and is included in a LIFO pool of the U.S. affiliate which includes products purchased from the possessions corporation in pre-TEFRA years, how should the LIFO index computation of the U.S. affiliate be made in the first year in which section 936(h) applies and in subsequent taxable years?

Answer 19: The U.S. affiliate should treat the first taxable year for which section 936(h) applies as a new base year in accordance with procedures provided by regulations under section 472. Thus, the opening inventory for the first year for which section 936(h) applies (valuing possession products purchased from the possessions corporation on the basis of the cost of such possession products), would equal the new base year cost of the inventory of such pool of the U.S. affiliate. Increments and decrements at new base year cost would be valued for LIFO purposes pursuant to the procedures provided by regulations under section 472.

Question 20: If the possessions corporation computes its income with respect to a product under the profit split method, with respect to which units of the product shall the profit split method apply?

Answer 20: The profit split method shall apply to units of the possession product produced in whole or in part by the possessions corporation in the possession and sold during the taxable year by members of the affiliated group (other than foreign affiliates) to unrelated parties or to foreign affiliates. In no event shall the profit split method apply to units of the product which were not taken into account by the possessions corporation in applying the significant business presence test for the current taxable year or for any prior taxable year in which the possessions corporation also had a significant business presence in the possession with respect to such product.

(2) *Pre-TEFRA inventory.*

Question 1: How is pre-TEFRA inventory to be determined if the profit split option is elected and the FIFO method of costing inventory is used by the U.S. affiliate?

Answer 1: Pre-TEFRA inventory is inventory which was produced by the possessions corporation and transferred to a U.S. affiliate prior to the possessions corporation's first taxable year beginning after December 31, 1982. Pre-TEFRA inventory will not be included for purposes of the profit split option. If the U.S. affiliate uses the FIFO method of costing inventory, the pre-TEFRA inventory will be treated as the first inventory sold by the U.S. affiliate during the first year in which section 936(h) applies and will not be included in the computation of combined taxable income for purposes of the profit split option. The treatment of pre-TEFRA inventory when FIFO costing is used by both the U.S. affiliate and the possessions corporation is illustrated by the following example in which FIFO unit costing is used:

Example. Assume the following:

	X		Y	
	Possessions corporation		U.S. affiliate	
	Number of units	Cost per unit	Number of units	Cost per unit
Beginning inventory	500	$150	200	$225
Units produced during 1983	1,000	200	.....	.....
Ending inventory	400	200	300	.....

In 1983, the beginning inventory of X, a possessions corporation, is 500 units with a unit cost of $150 and the beginning inventory of Y, the U.S. affiliate, is 200 units with a unit cost of $225, which represents the section 482 price paid by Y. Y's beginning inventory in 1983 represents purchases made in 1982 of products produced by X in that year. Y sells all the units it purchases from X to Z, a foreign affiliate. In 1983, X produces 1000 units at a unit cost of $200 and sells 1100 units to Y (the difference between 1500 units, representing X's 1983 beginning inventory (500) and the units produced by X in 1983 (1000), and X's ending inventory of 400 units). Of the 1100 units sold by X to Y in 1983 only 800 units (and not 1000 units) which were sold by Y to Z are taken into consideration in computing combined taxable income for 1983. Since FIFO costing by the possessions corporation is used, the cost is $150 per unit for the first 500 units and $200 per unit for the remaining 300 units. The 200 units sold by X to Y in 1982 are pre-TEFRA inventory and are not included in the computation of combined taxable income for 1983. They are also treated as the first units sold by Y to Z in 1983. This inventory has a unit cost of $225, which reflects the section 482 transfer price from X to Y in 1982. Y's 1983 ending inventory of 300 units will not be taken into consideration in computing the combined taxable income of X and Y for 1983 because the units have not been sold to a foreign affiliate or to persons who are not members of the affiliated group. In a subsequent year when the units are sold to Z, the cost to X and selling price to Z of these units will enter into the computation of combined taxable income for that year.

(c) *Covered Intangibles.*

Question 1: What are "covered intangibles" under section 936(h)(5)(C)(i)(II)?

Answer 1: The term "covered intangibles" means (1) intangible property developed in a possession solely by the possessions corporation and owned by it, (2) manufacturing intangible property (described in section 936(h)(3)(B)(i)) which is acquired by the possessions corporation from unrelated persons, and (3) any other intangible property (described in section 936(h)(3)(B) (ii) through (v), to the extent not described in section 936(h)(3)(B)(i)) which relates to sales of products or services to unrelated persons for ultimate consumption or use in the possession in which the possessions corporation conducts its business. The possessions corporation is treated as the owner of covered intangibles for purposes of obtaining a return thereon.

Question 2: Do covered intangibles include manufacturing intangible property which is acquired by an affiliate and subsequently transferred to the possessions corporation?

Answer 2: No. In order for a manufacturing intangible to be treated as a covered intangible, the intangible property must be acquired directly by the possessions corporation from an unrelated person unless the manufacturing intangible was acquired by an affiliate from an unrelated person and was transferred to the possessions corporation by the affiliate prior to September 3, 1982.

Question 3: If a possessions corporation licenses a manufacturing intangible from an unrelated party, will the licensed intangible be treated as a covered intangible?

Answer 3: No.

Question 4: How is ultimate consumption or use determined for purposes of the definition of covered intangibles?

Answer 4: A product will be treated as having its ultimate use or consumption in a possession if it is sold by the possessions corporation to a related or unrelated person in a possession and is not resold or used or consumed outside of the possession within one year after the date of the sale.

Question 5: Are sales of products that relate to covered intangibles excluded from the cost sharing fraction?

Answer 5: If no manufacturing intangibles other than covered intangibles are associated with the possession product, then sales of such product will be excluded from the cost sharing fraction. If both covered and non-covered manufacturing intangibles are associated with the possession product, then sales of such product will be included in the cost sharing fraction.

Question 6: If the cost sharing option is elected, is it necessary for the possessions corporation to be the legal

owner of covered intangibles described in section 936(h)(5)(C)(i)(II)(*c*) related to the product in order for the possessions corporation to receive a full return with respect to such intangibles?

Answer 6: No. For purposes of section 936(h), it is immaterial whether such covered intangibles are owned by the possessions corporation or by another member of the affiliated group. Moreover, if the legal owner of such covered intangibles which are subject to section 936(h)(5) is an affiliate of the possessions corporation, such person will not be required to charge an arm's-length royalty under section 482 to the possessions corporation.

§ 1.936–7 Manner of making election under section 936 (h)(5); special election for export sales; revocation of election under section 936(a).

The rules in this section apply for purposes of section 936(h) and also for purposes of section 934(e), where applicable.

(a) *Manner of making election.*

Question 1: How does a possessions corporation make an election to use the cost sharing method or profit split method?

Answer 1: A possessions corporation makes an election to use the cost sharing or profit split method by filing Form 5712–A and attaching it to its tax return. Form 5712–A must be filed on or before the due date (including extensions) of the tax return of the possessions corporation for its first taxable year beginning after December 31, 1982. The electing corporation must set forth on the form the name and the taxpayer identification number or address of all members of the affiliated group (including foreign affiliates not required to file a U.S. tax return). All members of the affiliated group must consent to the election. An authorized officer of the electing corporation must sign the statement of election and must declare that he has received a signed statement of consent from an authorized officer, director, or other appropriate official of each member of the affiliated group. The election is not valid unless all affiliates consent. However, a failure to obtain an affiliate's written consent will not invalidate the election out if the possessions corporation made a good faith effort to obtain all the necessary consents or the failure to obtain the missing consent was inadvertent. Subsequently created or acquired affiliates are bound by the election. If an election out is revoked under section 936(h)(5)(F)(iii), a new election out with respect to that product area cannot be made without the consent of the Commissioner. The possessions corporation shall file an amended Form 5712–A with its timely filed income tax return to reflect any changes in the names or number of the members of the affiliated group for any taxable year after the first taxable year to which the election out applies. By consenting to the election out, all affiliates agree to provide information necessary to compute the cost sharing payment under the cost sharing method or combined taxable income under the profit split method, and failure to provide such information shall be treated as a request to revoke the election out under section 936(h)(5)(F)(iii).

Question 2: May the "election out" under section 936(h)(5) be made on a product-by-product basis, or must it be made on a wide basis?

Answer 2: An electing corporation is required to treat products in the same product area in the same manner. Similarly, all possessions corporations in the same affiliated group that produce any products or render any services in the same product area must make the same election for all products that fall within the same product area. However, § 1.936–7(b) provides that the electing corporation may make a different election for export sales than for domestic sales. The electing corporation or corporations may also make different elections for products that fall within different product areas.

Question 3: May the possessions corporation elect to define product area more narrowly than the 3-digit SIC code?

Answer 3: No. Certain alternatives, such as the 4-digit SIC code, would not be permitted under the statute. However, other methods for defining product area may be considered by the Commissioner in the future.

Question 4: May a possessions corporation make an election out under the cost sharing method with respect to a product area if the affiliated group incurs no research, development or experimental costs in the product area?

Answer 4: Yes. In that case the cost sharing payment will be zero.

Question 5: If the significant business presence test is not satisfied for a product or type of service within the product area covered by the election out under section 936(h)(5) what rules will apply with respect to that product?

Answer 5: With respect to the product which does not satisfy the significant business presence test, the provisions of section 936 (h)(1) through (h)(4) will apply to the allocation of income. However, if a cost sharing or a profit split election has been made with respect to the product area, the cost sharing payment or the research and development floor under section 936(h)(5)(C)(ii)(II) will not be reduced.

Question 6: Is a taxpayer permitted to make a change of election with respect to the cost sharing and profit split methods?

Answer 6: In general, once the election is properly made, it is binding for the first year in which it applies and all subsequent years (including upon any later created or acquired affiliates), and revocation is only permitted with the consent of the Commissioner of Internal Revenue. However, a taxpayer will be permitted to change its election once from the cost sharing method to the profit split method or *vice versa*, or from the method permitted under section 936 (h)(1) through (h)(4) to cost sharing or profit split or *vice versa*, without the consent of the Commissioner if the change is made on the taxpayer's return for its first taxable year ending after June 13, 1986. Such change will apply to such taxable year and all subsequent taxable years, and, at the taxpayer's option, may also apply to all prior taxable years for which section 936(h) was in effect. A change of election will be treated as an election subject to the procedures set forth above and to section 481 of the Internal Revenue Code.

Question 7: If the Commissioner determines that a possessions corporation does not meet the 80-percent possession source test or the 65-percent active trade or business test (the "qualification tests") for any taxable year beginning after 1982, under what circumstances is the possessions corporation permitted to make a distribution of property after the close of its taxable year to meet the qualification tests?

Answer 7: A possessions corporation may make a pro rata distribution of property to its shareholders after the close of the taxable year if the Commissioner determines that the possessions corporation does not satisfy the qualification tests (a) by reason of the exclusion from gross income of intangible income under section 936(h)(1)(B) or Section 936(h)(5)(C)(i)(II) or (b) by reason of the allocation to the shareholders of the possessions corporation of income under section 936(h)(5)(C)(ii)(III); provided, however, that the determination of the Commissioner does not contain a finding that the failure of such corporation to satisfy the qualification tests was due, in whole or in part, to fraud with intent to evade tax or willful neglect on the part of the possessions corporation. The possessions corporation must designate the

distribution at the time the distribution is made as a distribution to meet qualification requirements, and it will be subject to the provisions of section 936(h)(4). Such distributions will not qualify for the dividends received deduction.

Question 8: If a possessions corporation owns stock in a subsidiary possessions corporation, any intangible property income allocated to the parent possessions corporation under section 936(h) will be treated as U.S. source income and taxable to the parent possessions corporation. Is the intangible property income taken into consideration in determining whether the parent possessions corporation meets the income tests of section 936(a)(2)?

Answer 8: While taxable to the parent possessions corporation, the intangible property income does not enter into the calculation of the 80-percent possession source test or the 65-percent active trade or business test of section 936(a)(2) (A) and (B). This would also be the case if the subsidiary possessions corporation made a qualifying distribution under section 936(h)(4).

(b) *Separate election for export sales.*

Question 1: What methods of computing income can a possessions corporation use under the separate election for export sales?

Answer 1: The only two methods which are available under the separate election for export sales are the cost sharing method and the profit split method.

Question 2: What is the definition of export sales for purposes of the separate election for export sales?

Answer 2: The determination of export sales is based upon the destination of the product, *i.e.*, where it is to be used or consumed. If the product is sold to a U.S. affiliate, it will be treated as an export sale only if resold or otherwise transferred abroad to a foreign person (including a foreign affiliate or foreign branch of a U.S. affiliate) within one year from the date of sale to the U.S. affiliate for ultimate use or consumption outside the United States as provided under § 1.954–3(a)(3)(ii).

Question 3: Assume that a possessions corporation sells a product to both foreign affiliates and foreign branches of U.S. affiliates. In addition, it sells the product to its U.S. parent for resale in the U.S. The possessions corporation makes a profit split election for domestic sales and a cost sharing election of export sales. Will the sales to foreign branches of U.S. affiliates be treated as exports subject to the cost sharing method or as domestic sales subject to the profit split method?

Answer 3: The sales to a foreign branch of a U.S. corporation are exports if for ultimate use or consumption outside of the United States as provided under § 1.954–3(a)(3)(ii).

Question 4: Under what circumstances may a possessions corporation make the separate election under section 936(h)(5)(F)(iv)(II) for computing its income from products exported to a foreign person when the income derived by such foreign person on the resale of such products is included in foreign base company income under section 954(a)?

Answer 4: If the income derived by a foreign person on the resale of products manufactured, in whole or in part, by a possessions corporation is included in foreign base company income under section 954(a), then the possessions corporation may make the separate export election under section 936(h)(5)(F)(iv)(II) for computing its income from such products only if such foreign person has been formed or is availed of for substantial business reasons that are unrelated to an affiliated corporation's U.S. tax liability. For purposes of the proceding sentence, a foreign person will be considered to be formed or availed of for such substantial business reasons if the foreign person in the normal course of business purchases substantial quantities of products from both the possessions corporation and its affiliates for resale, and, in addition provides support services for affiliated companies such as centralized testing, marketing of products, management of local currency exposures, or other similar services. However, a foreign person that purchases and resells products only from a possessions corporation is presumed to be formed or availed of for other than such substantial business reasons, even if the foreign person provides additional services.

Question 5: When will the "manufacturing" test set forth in subsection (d)(1)(A) of section 954 be applicable to the export sales of a product of a possessions corporation which makes a separate election for export sales?

Answer 5: An electing corporation will be required to meet the "manufacturing" test set forth in subsection (d)(1)(A) of section 954 with respect to export sales of its product in each taxable year in which the separate election for export sales is in effect.

(c) *Revocation of election under section 936(a).*

Question 1: When may an election under section 936(a) be revoked?

Answer 1: An election under section 936(a) may be revoked during the first ten years of section 936 status only with the consent of the Commissioner, and without the Commissioner's consent after that time. The Commissioner hereby consents to all requests for revocation that are made with respect to the taxapayer's first taxable year beginning after December 31, 1982 provided that the section 936(a) election was in effect for the corporation's last taxable year beginning before January 1, 1983, if the taxpayer agrees not to re-elect section 936(a) prior to its first taxable year beginning after December 31, 1988. A taxpayer that wishes to revoke a section 936(a) election under the terms of the blanket revocation must attach a "Statement of Revocation—Section 936" to the taxpayer's timely filed return (including extensions) and must state that in revoking the election the taxpayer agrees not to re-elect section 936(a) prior to its first taxable year beginning after December 31, 1988. Other requests to revoke not covered by the Commissioner's blanket consent should be addressed to the District Director having jurisdiction over the taxpayer's tax return.

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

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101 (c) is amended by inserting in the appropriate place in the table "§ 1.936–7 . . . 1545–0215

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved June 2, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–13156 Filed 6–9–86; 1:30 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–229; Ref: Notice Nos. 522, 534, 542]

Wine Labeling and Advertising; Use of Geographic Brand Names

Correction

In FR Doc. 86–12674, beginning on page 20480 in the issue of Thursday, June 5, 1986, make the following corrections:

1. On page 20482, in the first column, in the second complete paragraph, the fourth word in the tenth line should read "indicates".

§ 4.39 [Corrected]

2. Also on page 20462, in the third column, in § 4.39(i)(2), "(effective date of final rule)" should read "July 7, 1986".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the interest rate applicable to late premium payments and employer liability underpayments and overpayments beginning July 1, 1986. The interest rate, which is established by the Internal Revenue Service in accordance with the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 and the Internal Revenue Code, is reviewed semiannually, and the Internal Revenue Service has announced a decrease in the interest rate for the six-month period beginning July 1, 1986. This amendment is needed to notify pension plan administrators of the specific interest rate. This amendment also updates the mailing address for premium payments.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney-Advisor, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–956–5050 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title IV of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, and the Single-Employer Pension Plan Amendments Act of 1986, 29 U.S.C 1001 *et seq.*, (the "Act") provides for a bifurcated pension plan insurance program administered by the Pension Benefit Guaranty Corporation ("the PBGC"). The insurance program covers two types of pension plans, *i.e.*, single-employer plans and multiemployer plans, and has two basic sources from which funds are obtained to pay guaranteed benefits.

For single-employer plans, funds are obtained from premiums paid by on-going plans and from amounts collected as employer liability from sponsors of terminating plans. Employer liability, which is imposed under section 4062 of the Act, is the lesser of unfunded guaranteed benefits or 30 percent of the employer's net worth. If net worth is limiting, the employer also is liable to the PBGC for the excess of 75 percent of unfunded guaranteed benefits over the 30 percent of the net worth amount. Thus, guaranteed benefits in terminating single-employer plans are paid for by premiums in the single-employer fund, if the assets of the plan plus amounts collectible as employer liability are insufficient to fund guaranteed benefits.

For multiemployer plans, funds to provide for the payment of guaranteed benefits, should a multiemployer plan terminate with assets insufficient to fund those benefits, are obtained solely from premiums paid by on-going multiemployer plans. The employer liability provisions in section 4062 do not apply to multiemployer plans.

Section 2610.3 of 29 CFR sets forth due dates for premium payments by both single-employer plans and multiemployer plans, and § 2610.7 provides for late payment interest charges. Section 2622.7 of 29 CFR sets forth the due date for payment of the employer liability imposed by section 4062 and provides for interest on underpayments and overpayments.

Under section 4007 of the Act and 29 CFR §§ 2610.7 and 2622.7, the interest rate charged or paid by the PBGC is the rate established under section 6601(a) of the Internal Revenue Code ("Code"). Section 6601(a) provides for interest at an annual rate established under section 6621. As amended by the Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324, Pub. L. 97–248 ("TEFRA"), Code section 6621 provides that the interest rate is to be adjusted semiannually by October 15 and April 15 of each year and is to be based on the average prime interest rate for the six-month period ending on September 30 and March 31, respectively. An adjusted interest rate is effective January 1 or July 1 of the succeeding year, as applicable.

On April 14, 1986, in compliance with TEFRA, the Internal Revenue Service ("IRS") announced that the interest rate, which has been 10 percent since January 1, 1986, will be 9 percent beginning July 1, 1986 (IR–86–45).

Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth the decreased rate for the period beginning July 1, 1986. The 9 percent interest rate will be in effect for at least the six-month period ending December 31, 1986, and will continue in effect after that time if the IRS, in its next semiannual review, determines that no change is necessary. However, if the IRS determines, in its next review or subsequent semiannual reviews, that the interest rate should change, the Appendices will be revised accordingly.

This regulation also amends 29 CFR 2610.12 to reflect the same mailing address for Form PBGC–1 as is found in the instructions to that form.

Because this amendment simply sets forth the interest rate for the succeeding period of time, general notice of proposed rulemaking is not required. See 5 U.S.C. 553(b). Moreover, the PBGC has determined that it would be impractical and contrary to the public interest to delay the effective date of the regulation because the new interest rate is effective by law on July 1, 1986. Accordingly, the PBGC finds that good cause exists for issuing this regulation in final form without notice and opportunity for public comment and for making it effective before the 30-day period set forth in 5 U.S.C. 553.

The PBGC also has determined that this rule is not a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, Parts 2610 and 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4006, 4007, Pub. L. 93-406, 88 Stat. 829, 1004, 1010, 1013, as amended by secs. 403(1), 105, 402(a)(3), 403(b), Pub. L. 96-364, 94 Stat. 1208, 1302, 1264, 1298, 1300, and by sec. 11005, Pub. L. 99-272, 100 Stat. 82, 240 (29 U.S.C. 1302(b)(3), 1306, 1307).

2. Section 2610.12 is revised to read as follows:

§ 2610.12 Mailing address.

Plan administrators shall mail the Form PBGC-1 and all payments for premiums, interest and penalties to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348-5655.

3. Appendix A to Part 2610 is amended by adding new entries to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* *	* *	*
Jan. 1, 1986	June 30, 1986	10
July 1, 1986		9

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for Part 2622 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4062, 4063, 4064, 4067, 4068, Pub. L. 93-406, 88 Stat. 829, 1004, 1029, 1030, 1031, 1032, as amended by secs. 403(l), 403(g), 403(h), 403(i), Pub. L. 96-364, 94 Stat. 1208, 1302, 1301, and by secs. 11011, 11016, Pub. L. 99-272, 100 Stat. 82, 253, 268, (29 U.S.C. 1302(b)(3), 1362, 1363, 1364, 1367, 1368).

5. Appendix A to Part 2622 is amended by the Jan. 1, 1986, entry and adding a new entry to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* *	* *	*
Jan. 1, 1986	June 30, 1986	10
July 1, 1986		9

Issued in Washington, D.C., this 9th day of June, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-13289 Filed 6-12-86; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1986.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-956-5050 (202-956-5059 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93-406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1302, 1237-1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
July 1986	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this — day of June, 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-13321 Filed 6-12-86; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3025-5; Region II Docket No. 61]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces final approval by the Environmental Protection Agency (EPA) of a revision to the New Jersey State Implementation Plan for particulate matter. Today's action is being taken under the provisions of the Clean Air Act. It concerns a change in the procedure used by New Jersey to test the opacity of the exhaust emitted from buses. It also provides full self-inspection privileges to the New Jersey Transit Corporation and its fully owned subsidiaries, and partial self-inspection privileges to all other bus operators.

EFFECTIVE DATE: This action is effective on July 14, 1986.

ADDRESSES: Copies of the State's submittals are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

New Jersey Department of Environmental Protection, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: Title 7, Chapter 27, Subchapter 14 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles," contains a standard for the inspection and the control of smoke from heavy duty diesel-powered motor vehicles. This regulation is contained in the New Jersey State Implementation Plan (SIP) for particulate matter.

On February 21, March 14, and November 18, 1985, the State submitted a request to revise its SIP to change the procedure used to test the opacity level of the exhaust from buses. These changes were fully described in an Environmental Protection Agency (EPA) notice of proposed rulemaking published on September 12, 1985 at 50 FR 37238.

Based on its review of the State's submittal and the fact that no comments were received on its September 12, 1985 notice, EPA is today taking final action to approve this revision to the New Jersey SIP.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, and Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register of July 1, 1982.

Dated: May 28, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1570 is amended by adding paragraph (c)(39) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(39) A revision to the plan for attainment of the particulate matter standards submitted by the New Jersey Department of Environmental Protection on February 21, March 14, and November 18, 1985.

(i) Incorporation by Reference.

(A) Revisions to N.J.A.C. 7:27-14, "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles," effective July 1, 1985.

(B) Adoption of a new section of N.J.A.C. 7:27B-4 entitled "Air Test Method 4, Testing Procedures for Motor Vehicles," effective July 1, 1985.

(C) The following sections of N.J.A.C. 16:53 "Autobus Specifications which was effective on October 17, 1983:

Subchapter 3, Autobus Specifications
- 3.23 Certificate of Inspection
- 3.24 Maintenance and inspection
- 3.27 Exhaust Systems

Subchapter 6, Autobus Specifications for Small Bus
- 6.15 Exhaust System
- 6.21 Certificate of Inspection
- 6.30 Maintenance and inspection

Subchapter 7, Specifications for Special Autobus Type Recreational Vehicles
- 7.14 Exhaust Systems
- 7.17 Certificate of Inspection
- 7.23 Maintenance and inspecion

Subchapter 8, Specifications for Sedan Type Autobuses
- 8.15 Exhaust System
- 8.22 Certificate of Inspection
- 8.25 Maintenance and inspection

3. Section 52.1605 is amended by adding "Title 7, Chapter 27" heading at the beginning of the table; by revising the entry for Subchapter 14; and by adding new entries under Title 7, Chapter 27B and Title 16, Chapter 53 to the end of the table as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 27			
*	*	*	*
Subchapter 14, "Control and Prohibition of Air Pollution From Diesel-Powered Motor Vehicles.".	July 1, 1985	June 13, 1986.	
*	*	*	*
Title 7, Chapter 27B Subchapter 4, "Air Test Method 4, Testing Procedures for Motor Vehicles.".	July 1, 1985	June 13, 1986.	Only Sections 1, 2, 3 and 4 of Subchapter 4 are approved.

State regulation	State effective date	EPA approved date	Comments
Title 16, Chapter 53 "Autobus Specifications.".	Sept. 26, 1983.	June 13, 1986.	Only Sections 3.23, 3.24, 3.27, 6.15, 6.21, 6.30, 7.14, 7.17, 7.23, 8.15, 8.22, 8.25 are approved.

[FR Doc. 86-12439 Filed 6-12-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2933-1]

Approval and Promulgation of Implementation Plans; New Hampshire

Correction

In FR Doc. 85-29659 beginning on page 51250 in the issue of Monday, December 16, 1985, make the following correction:

§ 52.1523 [Corrected]

On page 51250, in § 52.1523 in the table, the heading for the last column should have read "O_3".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 442

[HSQ-119-F]

Medicare and Medicaid Programs Long-Term Care Survey

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

ACTION: Final rule.

SUMMARY: This final rule responds to a Federal court order requiring that we publish regulations regarding a survey system that enables the Secretary to better assess whether high quality care is actually being furnished to Medicaid recipients in nursing homes. This rule represents a departure from, and an exception to, our position that the survey method used to determine compliance with program participation requirements can be modified without the need for change in our regulations.

The final rule amends the Medicaid regulations to emphasize that the State survey agency must follow the survey methods and procedures prescribed by HCFA that are current at the time of the survey. This preamble describes the new resident-centered, outcome-oriented survey process that has been developed for use in nursing homes and follows through with the intent to implement such a process which we discussed in proposed rules published October 31, 1985 (50 FR 45584).

We are also amending the Medicare regulations to conform to the Medicaid change and to make clear that the new process is also to be used in Medicare facilities.

The new survey process, which has undergone extensive testing and refinement during the last few years, will provide a better basis than the current survey system for judging the quality of care actually provided to residents in skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) because it places greater emphasis on resident outcomes. This will enable surveyors to focus more directly on deficiencies that affect the health, safety and well-being of residents.

EFFECTIVE DATE: These regulations are effective on July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Sharon Harris, (301) 594-5547.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative Requirements

Section 1864 of the Social Security Act (the Act) requires the Secretary to enter into agreements with States to survey nursing homes and certify their compliance or noncompliance with Medicare participation requirements (the "conditions of participation"). Section 1902(a)(33)(B) of the Act requires the State Medicaid agency to contract with the State survey agency used by Medicare (if that agency is the agency responsible for licensing health facilities) to determine whether facilities meet the requirements for participation in the Medicaid program. Medicaid participation requirements for SNSs and ICFs are in sections 1902(a)(28) and 1905(c) of the Act, respectively. Regulations implementing these requirements are located in Part 442, Subparts D, E, F, and G of the Medicaid rules.

Under §442.101 of those rules, the State survey agency (SA) certifies to the Medicaid agency whether Medicaid participation requirements are met. The regulations at §431.610(f)(1) require in effect that the SA use Federal standards and the forms, methods, and procedures designated by HCFA to determine provider eligibility and certification under Medicaid. Section 442.30(a)(4) provides that, if the SA fails to follow the Federal procedures referenced in § 431.610(f), the Medicaid provider agreement executed on the basis of the SA's survey and certification will not be considered by HCFA to be valid evidence of a facility's compliance with participation requirements. When the agreement is considered to be invalid, HCFA must disallow Federal financial participation in expenses incurred by the State for the services furnished by that facility.

The process for reviewing and determining facility compliance with Medicaid health and safety requirements is referred to as the survey and certification process. Specific requirements for this process are established by law (section 1902(a)(33)(B) of the Act), implemented and enforced by regulations (Part 442, Subpart C), and interpreted in general program instructions (State Operations Manual), interpretative guidelines, and program letters and memoranda. The actual survey methods and forms constitute part of these general program instructions, and it has consistently been our position that it is not necessary to place survey reporting forms and program instructions into the *Code of Federal Regulations*.

If a facility has requested a provider agreement in order to participate in the Medicaid program, the request must be denied if that facility is found not to meet participation requirements. If a facility that has a provider agreement does not meet participation requirements, its provider agreement must be terminated.

HCFA has broad oversight responsibility for the Medicaid as well as the Medicare program. HCFA regional offices conduct on-site surveys of a sample of all types of facilities to evaluate whether the survey agency has correctly determined continued compliance of the facility with program requirements. When HFCA reviews certifications of facilities that participate only in Medicaid, it is referred to as "look behind". HCFA ascertains whether a facility meets Medicaid participation requirements, and will cancel a facility's approval to participate in Medicaid if it determines that those requirements are not met. This "look behind" authority is contained in sections 1902(a)(33)(B) and 1910(c) of the Act.

B. Current Survey Process

The current survey system, which has been in effect since 1974, was designed to address the many shortcomings in nursing home care that became evident in the late 1960s and 1970s. The process focused on structural requirements (such

as written policies and procedures, staff qualifications and functions, the presence of specific agreements and contracts, and a physical plant with particular characteristics) more than on resident outcomes, because at the time this was the area of the most serious deficiencies. Now that the current survey system has largely succeeded in improving the structural problems, it has become clear that further improvements can be made in the quality of nursing home care by focusing more heavily on resident outcomes.

C. Revised Survey Method

Beginning in 1978, the Department approved a number of demonstration projects and experiments with modified survey processes that would focus more directly on actual care provided rather than structural requirements. Each demonstration or experiment sought to develop methods and indicators that would reveal the quality of care provided rather than the facility's capacity to deliver care. In 1982, HCFA began to devise a new survey methodology, based on the results of the demonstrations and experiments. This was commonly referred to as the Patient and Services (PaCS) survey.

Also on May 27, 1982, HCFA proposed changes in the regulations governing certification procedures (47 FR 23404) which elicited significant public response. These changes dealt with issues such as the frequency of surveys, the nature of provider agreements and other regulatory provisions related to the inspection and approval of facilities participating in Medicare and Medicaid. In response to a Congressional mandate, HCFA then agreed to sponsor a comprehensive study on the regulation of nursing homes by the Institute of Medicine (IoM) of the National Academy of Sciences. In conjunction with the IoM study, HCFA also agreed to consult with consumer advocacy groups, State survey agencies and the nursing home industry.

From May through December of 1983, HCFA organized a series of meetings with a workgroup composed of Federal, State, consumer and industry representatives to identify what might be acceptable changes to the survey and certification process. The work group agreed that the survey process would be substantially improved if it focused on care provided, and identified observation and assessment of residents as the proper primary basis for compliance decisions. The participants gave unanimous support to the general concepts embodied in the early version of PaCS and favored eventual implementation of an outcome-oriented survey process on a national basis. With their support, field testing and refining of PaCS began.

In 1984, after some initial pilot tests, HCFA initiated more extensive testing in Connecticut, Rhode Island, and Tennessee. The chief goal was to identify any differences between findings derived from PaCS surveys and those derived from traditional surveys. The focal point was a series of 130 "double surveys" aimed at assessing the validity and reliability of the PaCS process. The results of this testing, plus regional office validation surveys in facilities for which SAs had used the PaCS process, showed that—

- Use of the PaCS process increased the number of resident-related findings.
- Adverse effects on resident health and safety were more often described in the deficiencies cited.
- Nursing home administrators were favorably impressed with the PaCS process because it focused on care provided.

Based on the testing results, HCFA decided to implement a refined version of the PaCS survey process. Just as the forms and methodology of the current survey process were not set forth in the regulations, the new forms and instructions are not set forth in these regulations, and any future changes will be implemented through general instructions, without further changes to these regulations. This allows flexibility to revise and improve the survey process as experience is gained.

D. Effect of Court Order

On August 9, 1985, in *The Estate of Smith* v. *Heckler*, the United States District Court for the District of Colorado ordered the Secretary to develop and publish a Notice of Proposed Rulemaking (NPRM) by October 31, 1985 regarding a new survey process that will enable the Secretary to know whether Medicaid nursing facilities are actually providing care of a high quality. The district court's order was the result of a class action filed in 1975 on behalf of residents in Colorado nursing homes. The plaintiffs claimed that the Secretary had failed to carry out a duty to ensure that Medicaid patients in nursing facilities were actually receiving high quality care. The case was originally dismissed by the district court on the basis that the Secretary had the authority to implement different procedures, but had no mandatory duty to do so. However, the plaintiffs appealed to the Tenth Circuit Court of Appeals which, in 1984, reversed the district court and ruled that the Secretary had failed to fulfill a statutory duty to promulgate regulations that would enable him to determine whether Medicaid facilities are providing high quality care.

In compliance with the District Court's order of August 9, we published an NPRM on October 31, 1985, announcing our intent to implement a new resident-centered survey process early in 1986 and describing the basic methodology of the new survey in the preamble. The NPRM also provided an address where interested parties could write to obtain a complete copy of the proposed survey forms and procedures.

E. The New Long-Term Care Survey Process

The modified long-term care survey method consists of a three-part review of a facility's compliance with program participation requirements—a review of administrative and procedural requirements (Part A), a review of requirements directly impacting resident care (Part B) and a review of Life Safety Code requirements. No changes have been instituted in the Life Safety Code portion of the survey. Facilities are still required to be in continuous compliance with all regulations in order to be certified. However, as described below, under the new methodology, a complete survey can under certain circumstances consist of only Part B and Life Safety Code reviews.

Part A of the new survey process covers current regulatory requirements in the following areas:

- Written administrative and resident care policies.
- Bylaws and other organizational documentation.
- Written agreements with outside resources/consultants.
- Committee meeting and reporting requirements.
- Staff qualifications and written development programs.
- Other written programs, plans or systems (e.g., equipment maintenance, disaster preparedness).

Surveyors conduct an on-site evaluation of the Part A requirements for initial (first time) program applicants. Facilities not meeting these requirements are not certified for participation. Part A is not generally applied for resurveys of participating long-term care facilities. At the time of recertification, a facility is required to attest in writing that there have been no administrative or procedural changes that would affect Part A compliance and that it agrees to notify the State agency immediately of any changes in its organization or management that may raise questions regarding continuing compliance.

Facilities are still required to comply with all Part A requirements, and surveys may be conducted as needed to verify compliance.

Part B of the new survey is the refined version of the resident-oriented process that has been known heretofore as PaCS. All SNFs and ICFs undergo a Part B survey on an annual basis. The Part B process and forms concentrate on the areas of the traditional survey that are directly related to resident care (nursing services, physician services, dietary services, resident activities, etc.). The new approach stresses resident outcomes and the actual provision of care and services. Surveyors cite deficiencies directly from the review of resident care and treatment rather than from a review of policies and procedures.

The Part B survey is designed to provide a more valid and reliable assessment of the quality of care furnished by a nursing home. Through the in-depth review of a representative sample of residents, surveyors are able to identify more accurately resident needs and problems and, subsequently, to determine how well care is being provided to meet those needs. In addition, by requiring surveyors to follow specific procedures and to perform resident review using a specified checklist, Part B promotes greater consistency in methodology and findings than has been achieved under the process, as shown by the following examples:

• Under the current process, surveyors could evaluate a facility's policies and procedures to ascertain that grooming and personal hygiene rules are designed to satisfy resident needs. Many surveyors have routinely observed residents during the course of the survey. However, a systematic observation of individual residents was not a part of the traditional survey process. Under the new process, surveyors focus on whether resident needs are actually satisfied. Surveyors are required to observe residents and to document whether they are in fact clean and well groomed. Information provided by the residents can also be used to determine whether such needs are regularly met.

• Under the current process, surveyors could review a sample of medical records to determine if restorative nursing procedures are performed daily and recorded. The new process requires surveyors to speak with residents about the frequency of the care and treatments received, in addition to observing and documenting the frequency of care for comparison with the medical record. Surveyors then use structured worksheets to record findings for each resident reviewed.

The major innovation of the Part B survey is that surveyors are brought face to face with residents in a more systematic manner in order that they may directly evaluate resident care in each of the four major components of the new process:

—Resident-centered in-depth tour of the facility.
—Observation, interviews, and medical record reviews of a sample of residents.
—Observation of dining and eating assistance.
—Observation of drug administration.

Although the observation of residents has always been an integral part of the survey process, the new methodology ensures that the structured observation of residents and the actual care they receive is the focal point of the survey. This improvement is achieved in large part by requiring all surveyors to employ the new forms, including structured worksheets to record their findings in each of these areas.

More specifically, following a standard entrance conference, the first major component of the survey is the facility tour, during which surveyors assess the facility's physical environment and overall care patterns and also identify a representative sample of residents for in-depth review. Guidelines stress that the tour should focus on residents' needs and whether or not those needs are being met.

Surveyors then evalutate the physical condition of each resident in the sample against a prescribed set of criteria that include such things as the resident's ability to perform activities of daily living, plus grooming, hygiene, alignment and position, skin condition, and behavior. The interviewing function is carried out concurrently with the observation function. Surveyors observe the provision of care and services, such as dressing changes or care of bed sores and note whether the care is provided appropriately.

Following the observation/interview, surveyors review the medical record of each patient in the sample to determine whether the facility has adequately assessed all the problems and needs, developed a plan of care that addresses those needs, provided care according to the plan, and evaluated the effectiveness of care. Through review of records, surveyors identify the patient problems that are being appropriately addressed, those that have been overlooked or neglected, and those over which the facility has no control.

A third major component of the survey is the focused evaluation of meals, dining areas and eating assistance. By observing how patients or residents are being fed, how much help they need, and how much food they eat, in conjunction with determining if food trays conform to diet orders, surveyors determine whether the facility is actually providing proper nourishment. The dining observation also provides information on a wide range of non-dietary issues such as staff interaction with residents, availability and use of adaptive equipment, appropriateness of resident dress and resident and staff hygiene for meals, etc.

Finally, the drug administration component of the new survey process requires surveyors to note drugs as they are prepared for each patient or resident, observe the actual administration of each drug and then check the drug orders to determine whether the preparation and administration are done as prescribed. This methodology ensures that survey findings on medication administration focus on deficient practices and cannot be dismissed on grounds that drugs were properly administered though not properly documented.

Once the four major tasks of the Part B process have been completed, a survey team identifies patterns and areas where a facility appears to have difficulty in addressing problems and providing care. Surveyors then formulate deficiency statements based on the severity and/or frequency of identified care problems. Although deficiency statements continue to require the exercise of professional judgment, the new process ensures that each deficiency stems from resident-specific examples that are indicative of a breakdown in a facility's care delivery system. At the traditional exit conference concluding a survey, the survey team meets with facility staff to discuss all findings and the deficiencies that will be cited. Under the new process, the survey team should be able to provide specific examples of how a facility's deficiencies are affecting the quality of life for its residents.

As in the traditional survey, facilities are then required to submit a plan of correction that identifies the changes needed to ensure correction of deficiencies. Plans of correction cannot simply address treatment of the individual residents for whom problems are identified, but must address the problems with the underlying system which allowed the deficiencies to occur. Plans of correction specific to residents identified as examples of inadequate

care are not acceptable. In conducting followup surveys, surveyors reevaluate the specific types of resident care identified as deficient, although not necessarily the same residents. If care problems continue at this point, further action on the certification status of facilities still out of compliance follows traditional procedures.

II. Discussion of Comments

We received a total of 74 letters of comment in response to the proposed regulations. They came from State survey agencies, State ombudsman groups and agencies for the aging, local and national consumer advocate groups, national provider organizations and professional groups as well as nursing home residents and other concerned individuals. Very few of the comments addressed the proposed new regulatory language mandating that the States use the survey procedures prescribed by HCFA. Instead, they focused on the new survey process itself.

As discussed below, while we have made some changes in response to comments, we conclude that none of the comments raised issues which would warrant delaying the implementation of PaCS.

About half of the commenters specifically expressed their support for the change to an outcome-oriented, resident-centered survey process in nursing homes; none indicated a preference for the former survey process. Almost all commenters had suggestions for improving the new process.

Twenty-seven of the letters, most of them from consumer advocates, requested that we extend the 60-day comment period to allow for wider distribution and more extensive consideration of the new survey forms and guidelines and for review of the recently published Institute of Medicine (IoM) study on nursing home reform. We did not extend the comment period because—

- We believe it is important to the well-being of nursing home residents to publish final rules so that we can implement the new survey process; and
- The number and diversity of comments indicated that the 60-day period was adequate.

Comments and our response to those comments are discussed below.

A. Implementation Schedule

Comment: Twenty-nine responders (mostly consumer advocates and State agencies) commented on this topic. Of these, four supported immediate implementation of PaCS, with a series of reevaluations at predetermined intervals, as a basis for revising the methodology and forms. The other 25 recommended that implementation be delayed until one or more of a variety of activities were completed. The principal activities that commenters recommended to precede implementation were:

1. Consider the recommendations from the IoM study.
2. Publish all survey forms and guidelines as part of the NPRM process.
3. Develop and implement a detailed training plan for all surveyors.
4. Revise or develop supplements for specified components of the process, e.g., sampling methodology, resident assessment procedures, deficiency formulation criteria.
5. Make allowances for procedural variations in States whose survey systems are integrated with the inspection of care program and assure appropriate funding for the new process. (Sections 1902(a)(26) and (a)(31) of the Social Security Act require that States conduct an annual review of each Medicaid recipient who is in a long-term care facility to determine the necessity and desirability of continued placement in a skilled nursing or intermediate care facility and the adequacy of services available to meet each resident's needs. This review is known as inspection of care.)

Response. In general, we agree that future improvement of the system is possible and desirable. However, since the new process has already been extensively tested and refined on the basis of the testing results as well as in response to comments, we believe that the new system, already recognized as an improvement on the current system, should be implemented as soon as possible. We plan to reappraise and make changes on the basis of nationwide experience, probably by the end of 1986. This will give us at least 6 months of survey data to evaluate, as well as an opportunity to obtain additional comments and suggestions from surveyors, providers, and residents and their representatives. We do not believe that the specific comments listed above warrant delay, for the following reasons:

1. The IoM report, which we did not receive until February 28, cited the new survey process as a "step in the right direction" and a "significant improvement" over the current system. Therefore, even though the report also pointed out the need for further changes, we believe it is sufficient to take into consideration the results of this and of other studies in future refinements of the survey process.

2. We do not believe it is necessary or appropriate to publish all survey forms and guidelines in an NPRM. It is neither required by statute nor by the Tenth Circuit decision, and would make it extremely difficult to make the further improvements that actual experience with the system may indicate are needed. We have in fact made the survey forms and methodology widely available for public comment, and we believe this is sufficient.

3. A detailed discussion of the training program is included in the following section.

4. Specific components of the survey process are discussed below under other topics.

5. Regarding the integration of the survey system and inspection of care, two of the three States in which the new PaCS survey process was formally tested do in fact use integrated survey and inspection of care procedures and use vastly different approaches. Since these two States were able to use PaCs in the combined system quite effectively, we do not anticipate problems in this respect. Current funds are considered adequate because the new process is expected to be budget-neutral, i.e., cost no more than the current system.

B. Training Program

Comment: Twenty-six commenters addressed the issue of training surveyors in how to use the new process. The primary concerns raised were:

- The overall adequacy of the new training program (8 comments).
- The need to emphasize resident interviewing techniques (10 comments).
- The need for HCFA to train all surveyors centrally to ensure consistency in applying the new process (17 comments).

Other commenters suggested that followup training be done, and that, for at least 2 years, all newly hired surveyors should be trained directly by HCFA.

Response: First, the 3-day training program is a comprehensive one which familiarizes surveyors with the new process through extensive audio-visual materials combined with a series of case study exercises. Each of the new data collection worksheets is covered in detail and used frequently. The instructors are experienced State agency and regional office surveyors from various disciplines (e.g. nurses, dieticians, pharmacists) that have tested the new survey process in actual facilities. These instructors participated in a training course specifically designed

for instructors that introduced them to all the training materials.

Second, instructors are placing particular emphasis on interviewing skills, focusing on the importance of sensitivity to the rights, needs and dignity of residents. We also worked with the National Citizens Coalition on Nursing Home Reform to develop a videotape on interviewing, using actual residents as role players.

Finally, resource and time constraints precluded us from training all surveyors through centrally-run training sessions. However, we have developed a self-contained training module for use by the States and regional offices in training all surveyors who did not attend the six sessions conducted by HCFA. The training module will ensure consistency through the use of standardized audio-visual aids and training manuals to familiarize all surveyors with the new process. In addition, each HCFA regional office is developing a plan that includes detailed procedures on how it will work with each State survey agency in training all surveyors. These plans are subject to central office approval to ensure consistency among the regions. We plan to conduct followup training early in 1987 that will focus on problems or needs identified during the initial stages of implementation. In addition, the PaCS training materials will be incorporated as part of the Orientation Program for Newly Employed Surveyors and the Basic Course for Health Facility Surveyors.

C. Methodology for Selecting a Sample of Residents (38 Comments)

Comment: Most of the commenters who addressed this issue recommended that the sample selection procedures be revised to ensure that the sample is representative of the facility as a whole.

Ten commenters, including nine consumer advocates, recommended that sample size be increased from 10 percent to 20 percent or more (two commenters recommended 100 percent). Eight commenters suggested that surveyors review a larger sample when problems are found. Finally, five responders cautioned against allowing facilities to select or influence the selection of the sample.

Response: The procedural guidelines were revised to better assist surveyors in selecting a sample that is representative of the facility's population. Surveyors must first identify the following four categories of residents:

- Alert, with light care needs.
- Confused, with light care needs.
- Alert, with heavy care needs.
- Confused, with heavy care needs.

Next, surveyors select a proportionate number of residents from each category for in-depth review. The guidelines then spell out a variety of care needs and of undesirable outcomes (e.g., contractures, dehydration) that ought to be represented in the sample.

Previous evaluations of the PaCS process have shown that random sampling alone is ineffective because, due to the often small number of residents with particular problems, the sample may focus on residents whose problems are not representative of the facility population. At the present we will rely on the surveyor's professional judgment in order to select a sample that targets problem areas. We have, however, contracted with Brown University's Center for Long-Term Care Gerontology to conduct a study that will identify the most effective and statistically sound sampling methodology. Guidelines make clear that surveyors can expand a sample over the 10 percent minimum if that is necessary to focus on a problem found in the original sample. However, we feel that a 10-percent sample is adequate to make a judgment while still making efficient use of surveyor resources. The guidelines have also always made clear to surveyors that it is the surveyor's responsibility to select the sample. Thus, facilities are not to select or influence selection of the sample.

D. Involvement of Residents (26 Comments)

Comment: Commenters expressed support for the increased level of resident involvement built into the new survey process. Many stressed the importance of protecting the confidentiality of interview participants, citing the possibility of facility retaliation against those residents. Commenters also made several additional suggestions for facilitating resident involvement including:

- Develop and distribute to residents an educational brochure to explain the new survey process.
- Permit resident participation in the exit conference.
- Make an effort to hear from representatives of residents who are unable to communicate.
- Allow every resident to participate in the survey.

Response: Both the procedural guidelines and the new surveyor training program stress the confidential nature of interview information and the need to protect the privacy of residents. In documenting compliance decisions, surveyors will take care to protect the identity of individual residents.

With respect to the specific comments noted above informational materials that have been made widely available to national and local consumer advocate groups, provider groups and the States can be used for resident education.

We do not believe that resident participation in the exit conference is appropriate. The new process provides for an unprecedented level of resident involvement, but the findings discussed at the exit conference are often preliminary in nature and can be misinterpreted. We believe that the presence of residents at the exit conference would inhibit frank and open discussion of preliminary findings between the survey team and facility staff. Residents and their representatives will have access to formal deficiency findings which are by law (Section 1864(a) of the Social Security Act) publicly disclosable no later than 90 days following the survey at social security district offices, HHS regional offices, and local public assistance offices.

Procedural guidelines encourage surveyors to converse with available family members or other representatives of residents who a.e unable to communicate. Guidelines also instruct surveyors to wear identification and to post notice of the survey in order to encourage maximum resident participation in the survey.

E. Criteria for Formulating Deficiency Citations (18 Comments)

Comment: Commenters felt that the system for determining what constitutes a deficiency is inadequate. They recommended that surveyors use objective criteria, such as numerical norms and standards, in making those determinations, and expressed concern about the legal sufficiency of findings not based on such criteria.

Response: The new PaCs guidelines provide surveyors with more detailed instructions than under the current system for deciding, on the basis of the severity and frequency of the problems found, whether to cite a deficiency. However, as in the current survey process, the decision to cite a deficiency remains primarily a matter of surveyor judgment. The new survey process, however, does have the potential for producing objective criteria, based on retrospective review of the worksheets.

Specifically, HCFA has commissioned a study to examine the relationship between numbers and types of negative findings and deficiency citations using the new survey process. The study's findings will assist us in determining whether it is feasible and desirable to

establish numerical norms and standards for surveyor use on a nationwide basis. However, even without such criteria, the new process is an improvement because it ensures that deficiency citations have a resident-specific basis that is indicative of breakdowns in a facility's care delivery system. We believe that the change to documented findings based on the actual provision of care to patients results in increased legal sufficiency of findings.

F. Need for Standardized Mechanism for Assessment of Residents

Comment: Fourteen commenters, including ten State agencies, recommended that the new survey process include a standardized mechanism for the comprehensive assessment of residents. Several of the commenters added that the survey process should also ensure that each resident receives a standardized assessment of his or her care needs at admission and periodically thereafter.

Response: The survey does not include the standardized assessment of each resident because the conditions of participation do not require this. However, the new survey process does introduce a standardized mechanism for assessing all aspects of care of the residents included in the sample. The observation/interview/record review worksheet covers 22 separate areas including activities of daily living, restraints, social services, rehabilitation, activities, etc. Surveyors also interview these residents and review each sample resident's record to ensure that assessments, plans of care, interventions and evaluations are appropriate and current.

G. Involvement of Ombudsmen (20 Comments)

Comment: Commenters, primarily consumer groups, were in favor of involving ombudsmen in the survey process; and requested clarification on HCFA's plans to do this.

Response: HCFA fully supports ombudsman involvement and is actively exploring the feasibility and mechanics of linking the ombudsman program with the survey and certification program. We are working with States that already involve ombudsman groups in the survey process to develop a model for such interaction. Our objective is the routine exchange of information between ombudsman groups and survey agencies.

H. Recommendations on Part A of the New Survey Process (11 Comments)

Comment: A total of eleven respondents addressed the use of Part A of the new process. Five commenters suggested that both Part A and Part B be conducted on an annual basis. Another suggested that Part A be performed at least tri-annually or that certain events (e.g., change of ownership) or unsatisfactory survey results trigger a Part A survey. Five other commenters expressed general objections to the facility self-reporting aspect of Part A, with one specifying the need for onsite review of staffing patterns.

Response: Part A, which contains administrative and procedural requirements (as opposed to direct care requirements), was designed for use with facilities seeking initial certification to participate in Medicare and Medicaid. Facilities which are already participating will be surveyed using Part B (plus the traditional Life Safety Code survey). These facilities will be required to submit a signed statement that no changes have been made. Conducting annual Part A surveys in all participating facilities, in conjunction with the new Part B process, would expand the burden on both States and providers without any likelihood of improvement in direct care. However, facilities are still required to be in continuous compliance with all requirements (including those in Part A), and surveys may be conducted as needed to verify compliance. In addition, surveyors are expected to cite deficiencies in these areas that they discover during a Part B survey. The Part B survey includes onsite review of nursing staff to ensure that facilities comply with the requirement for 24-hour nursing coverage. Staffing shortages in other areas (e.g. housekeeping, dietary services, medical records) will become evident in the course of the survey's review of the care and services provided to residents.

I. Need To Revise the Conditions of Participation (10 Comments)

Comment: Commenters recommended that the conditions of participation in the regulations for SNFs and ICFs be revised in conjunction with the implementation of the new survey process. Two commenters cautioned against using the PaCS guidelines for instituting new standards without proper administrative procedures.

Response: We are considering revising the regulations which set forth the conditions of participation. However, we see no justification for delaying this significant improvement in the survey system while changes to the conditions are being considered. The PaCS guidelines simply aid the surveyor in applying the current regulations. The guidelines are illustrative and do not make changes in the requirements of the regulations.

J. Integration of Certification Survey and Inspection of Care Review (9 Comments)

Comment: Commenters were concerned over the duplication in the new resident-centered survey process and the inspection of care review process. Seven of these commenters explicitly recommended that HCFA prescribe the integration of the two processes on a national basis.

Response: We recognize the inherent duplication in the survey and inspection of care processes and fully support their integration. We will continue to develop and submit to Congress legislative proposals to make integration a statutory requirement.

K. Composition of Survey Team (9 Comments)

Comment: Commenters recommended various compositions for the survey team. The most common suggestion was that a team consist of at least three health professionals, including at least one registered nurse.

Response: Survey team size and composition are decided by the States as established in our agreements with States to conduct surveys, in accordance with Section 1864(a) of the Social Security Act. PaCS guidelines recommend that teams include at least two and no more than five surveyors, and that the team leader be a registered nurse. This recommendation is based on PaCS test findings that teams of this size tended to cite more and better-documented deficiencies than did smaller or larger teams.

L. Role of the Surveyor (8 Comments)

Comment: Commenters felt that surveyors ought to determine the "root causes" of facility problems and provide technical assistance to the facility in developing an appropriate plan of correction. They argued that eliminating the review of process and structural requirements would prevent surveyors from performing this type of consultation.

Response: The primary role of the surveyor is to assess the quality of care provided by the facility. As such, the surveyor's responsibility is to advise facility management of identified deficiencies and to ensure that appropriate corrective action is taken.

Experience has shown that surveyor opinions as to the "root cause" of problems are not always correct, often leading to unnecessary and/or inappropriate "solutions". For example, surveyors may identify a nursing deficiency, but incorrectly conclude that it results from a shortage of nurses, when the actual cause is a lack of inservice training. We believe that the more effective approach is to advise facility management of deficiencies and require them to identify the sources of problems and submit an appropriate plan of correction. During the followup visit, the surveyor determines, based on observation and interview whether the problem still exists, rather than focusing on whether the problem's root cause was properly diagnosed.

M. Surveyor Qualifications

Comment: Four commenters recommended that HCFA impose specific educational and training requirements on surveyors to ensure their capability for performing a quality survey.

Response: HCFA is currently looking at surveyor proficiency, licensing and credentialing. This includes State Merit System entry requirements as well as continuing education in competency measures. We intend to develop guidelines for the periodic assessment of the training and proficiency of all State surveyors, not just those that survey nursing homes. However, we do not see this as a reason to delay PaCS.

N. Need To Improve Enforcement Procedures (7 Comments)

Comment: Commenters expressed concern about the overall weakness of the survey process in the area of enforcement. They felt that though a new survey process might better identify problems, it could not ensure high quality care without adequate tools for the enforcement of quality standards.

Response: This regulation implements a change in the survey methodology, not in the enforcement mechanism used when facilities cannot achieve compliance. However, the new survey's focus on actual care delivery and resident outcomes will increase our enforcement capability. Identification of problems that directly affect the well-being of residents provides a stronger basis for compliance decisions. Finally, HCFA has recently implemented new termination procedures that should enhance the effectiveness of our enforcement efforts because they will promote timely termination of the provider agreement when the facility cannot achieve compliance.

O. Need to Revise Guidelines (8 Comments)

Comment: Commenters recommended revisions to both the PaCS procedural and care guidelines. Most wanted revisions immediately while a few felt revisions would be appropriate after at least 6 months of nationwide use.

Response: We have developed two sets of guidelines to instruct surveyors in conducting the new survey process. *Procedural guidelines* explain each step of the methodology, including how to use the structural worksheets and to incorporate findings onto the new survey report form. On the basis of commenter suggestions, we made a number of revisions to the procedural guidelines. Examples of these changes include:

- Meeting with resident councils—Guidelines now elaborate on procedures surveyors will follow in meeting with resident councils and on how information from these meetings is to be used.
- Formulation of deficiency citations—Guidelines now clarify that surveyors are to expand the sample of residents if surveyors are not satisfied after review of the initial sample as to whether a deficiency citation is warranted. Guidelines also instruct surveyors in how to expand the sample.
- Selection of sample of residents—Guidelines now provide surveyors with additional instructions on how to select a sample of residents that is representative of the facility population.

Care guidelines contain descriptions of generally accepted clinical practices for the treatment of typical long-term care conditions and problems. These guidelines provide surveyors with consistent and objective criteria for performing in-depth review of resident care. There were few specific suggestions on revision of the care guidelines. Instead, commenters suggested that one or more different sections of the guidelines needed to be "reworked" or merged. Because of the lack of consensus and specificity in the comments, we will await further comments from surveyors, providers and consumers during the first 6 months of actual experience with PaCS after nationwide implementation before we proceed with refining these guidelines. We will also refine procedural guidelines based on the same set of comments.

P. Need to Revise Forms (5 comments)

Comment: Some responders suggested that the survey forms be revised to include:

—More information from the care guidelines (e.g. suggested interview questions, examples of undesirable outcomes of care).
—References to all regulatory requirements, including conditions, standards, and elements.

Response: We believe that, as a result of extensive testing and revision, the forms now contain information sufficient for the surveyor to carry out the assigned tasks. Collateral materials are available (e.g., procedural guidelines and care guidelines) to provide the surveyor with any additional information necessary to effectuate the survey.

As suggested by commenters, references to specific conditions of participation for skilled nursing facilities, standards for intermediate care facilities, and other regulatory requirements have been incorporated into the new survey report forms.

Q. Staff Involvement

Comment: Four commenters, all consumer advocates, requested clarification of the selection and role of the facility staff involved in the survey process.

Response: Procedural guidelines instruct surveyors to observe and question appropriate staff about the care and treatment of residents (e.g., techniques used, frequency of treatment). Selection of staff is made in accordance with the selection of residents for review. The role of the staff is to provide information about the resident. Staff should be involved to the extent the surveyor feels is necessary to conduct an appropriate and thorough assessment.

R. Inflexibility of New Regulations

Comment: Four respondents, including three State survey agencies, expressed concern over the lack of flexibility in the new regulatory language requiring States to use ". . . the survey methods, procedures and forms . . ." that are prescribed by HCFA. For example, they feel that this language precludes States from adding State citations to the documents or altering them to incorporate inspection of care findings.

Response: The new regulations are designed to promote a uniform survey approach. We do not consider it necessary to encourage State experimentation. However, we will continue to evaluate and approve alternative approaches consistent with our long-term objectives. We will make every effort to accommodate States that wish to make changes for the purpose of survey/inspection of care integration.

States are free to add licensure requirements to the survey form as long as this does not interfere with the collection or processing of survey data pertaining to Federal requirements.

S. Dining and Eating Assistance

Comment: Three commenters, all consumer advocates, suggested expanding the sample of residents selected for observation of dining/eating and establishing a selection criteria method. One of these commenters suggested all three meals should be observed in one day, the observation should be both inside and outside the dining area, and surveyors should intermingle and talk to the residents during the observation.

Response: PaCS procedural guidelines already include instructions to expand the resident sample when problems are identified as well as criteria for selecting residents (e.g., special diets) and instructions to observe residents both inside and outside the dining area and to chat with residents during meal observation. Procedures mandate that at least two meals a day must be observed. If a problem in this area is detected, it may be necessary to observe a third meal. However, to observe three meals routinely would not be feasible and would not be an efficient use of surveyor resources.

T. Acknowledgment of Good Care

Comment: Three commenters suggested that surveyors be encouraged to acknowledge good quality care as well as poor care and that examples of good care be shown on the survey report form.

Response: Although the survey process, as part of an enforcement program, necessarily focuses on deficiencies, surveyors also document on the survey report form, the basis for finding that a requirement is met.

U. Use of Tape Recorders in Survey Process

Comment: One commenter suggested the use of tape recorders to record findings. The commenter felt that recorded findings would make it easier to develop the deficiency citation because pertinent data would not become lost in a paper shuffle.

Response: We believe that tape recorders would tend to intimidate residents during the interview or otherwise inhibit the free exchange of information that is essential to the interview portion of the survey process.

III. Provisions of the New Regulations

Although the court order requiring us to publish regulations regarding the new survey system applied only to Medicaid facilities, the survey and certification process applies to the Medicare program as well. Accordingly, in Subpart S of Part 405 of the Medicare regulations, § 405.1906 is amended to specify that the survey agency must follow whatever methods and procedures are prescribed by HCFA in current general instructions. (General instructions means instructions of general applicability, that is, instructions that must be followed by HCFA's employees, agents and contractors.) We are also amending § 442.30(a) of the Medicaid rules (which deal with the "look behind" process) to emphasize that unless the survey agency follows current instructions, there could be a finding that the Medicaid provider agreement is not evidence of the facility's compliance with the Medicaid program requirements.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any "major rule". A major rule is any regulation that is likely to result in:

- An annual impact on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for a regulation unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities.

As we stated in the proposed rule published October 31, 1985, the provisions of these regulations do not meet any of the criteria for a major rule, and a regulatory impact analysis under Executive Order 12291 is therefore not required. The regulation changes affect only States. States are not small entities under the RFA, and we have therefore determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1980

Section 405.1906(b) of this rule contains information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980. The new long-term care survey forms are currently approved through September 1987 under OMB control number 0938–0400.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart S—Certification Procedures for Providers and Suppliers of Services

1. The authority citation for Subpart S is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, and 1395tt.

2. Section 405.1906 is revised to read as follows:

§ 405.1906 Determining compliance.

(a) The decision as to whether there is compliance with a particular condition of participation or condition for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(b) The State survey agency must use the forms, survey methods, and procedures that are prescribed by HCFA in current general instructions and approved by the Office of Management and Budget under the Paperwork Reduction Act.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for Part 442 is revised to read as follows:

Authority: 42 U.S.C. 1302.

2. In § 442.30, paragraphs (a) introductory text and (a)(4) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

* * * * *

(4) The survey agency failed to use the Federal standards, and the forms, methods and procedures prescribed by HCFA in current general instructions, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; and No. 13.773, Medicare—Hospital Insurance.

Dated: April 3, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: May 20, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-13410 Filed 6-12-86; 8:45 am]

BILLING CODE 4120-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Final rule; amendment.

SUMMARY: On October 11, 1985, the Board of Directors approved an amended version of Part 1614 which was published in the Federal Register on November 26, 1985. Included in § 1614.1 of the amended version was a new definition of the term "private attorney." While the Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the LSC Act and the Appropriations Act, it also requested and received comments on the new definition in preparation for possible reconsideration. After carefully considering comments received on the new definition, the Board of Directors on March 14, 1986, approved an amended version of § 1614.1 of Part 1614.

EFFECTIVE DATE: July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas A Bovard, Counsel to the Division of Policy Development, (202) 863-1842.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the Board of Directors approved an amended version of Part 1614 which was published in the Federal Register on November 26, 1985. Included in § 1614.1 of the amended version was a new definition of the term "private attorney." While the Board decided that Part 1614 as amended should be published as a final rule and go into effect at the expiration of the notice period required by the LSC Act and the Appropriations Act, it also requested and received comments on the new definition in preparation for possible reconsideration. The revised regulation was published on November 26, 1985. 50 FR 48586. A total of 21 comments, all timely, were received by the Corporation. After carefully considering these comments, the Board of Directors on March 14, 1986, approved an amended version of § 1614.1 of Part 1614.

In response to comments the Board voted to strike the last sentence of § 1614.1(d) which referred to the Ethics in Government Act (18 U.S.C. 207), and to add a new paragraph (e) at the end of § 1614.1. New paragraph (e) provides that after the effective date of the regulation no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years had been a staff attorney as defined in section 1600.1 of the Corporation's regulations.

The Board was informed that there were programs which had laid off staff attorneys and then contracted to pay them for services relating to the same matters they were involved with while on staff. Arrangements of this type pose at least two problems. First, they run counter to one of the purposes of PAI: to encourage growth in the number of lawyers participating in the provision of legal services to the poor. Second, these kinds of arrangements create an appearance of impropriety.

It should be noted that paragraphs (d) and (e) of § 1614.1 apply only for the limited purpose of determining whether funds given to a particular lawyer should be counted toward a recipient's PAI requirement. There are many circumstances in which it would be best to give a client's case to someone who had been a staff attorney. Accordingly, paragraphs 1614.1(d) and (e) do not prohibit such a practice. They simply establish that fees given a private attorney who has recently been a staff attorney cannot be credited toward the PAI requirement.

In further response to comments, three provisos have been added to ensure that these two paragraphs are fairly applied and that they further the goals of PAI. First, because the Board recognizes that some programs may already have contracted to do PAI work with attorneys who have recently left staff, it has decided to permit recipients to honor these contracts for the rest of the 1986 fiscal year. Recipients may not, however, enter into any new contracts for direct payment to former staff attorneys.

Second, comments suggested that the prohibition on direct payments to former staff attorneys would place former staff attorneys who take part in *pro bono publico* or judicare programs at a disadvantage. It was alleged, for example, that this provision would prevent them from receiving reimbursement for actual out-of-pocket expenses incurred in representing *pro bono publico* clients even though all other participating attorneys receive such reimbursement. The Board did not intend paragraph (e) to curtail the participation of former staff attorneys in these programs. It wished simply to ensure that former staff attorneys who take part in them do not receive preferential treatment. Accordingly, it has added a proviso making clear that recipients may use PAI funds for *pro bono publico* or judicare projects in which former staff attorneys participate. In such cases the only applicable restriction is that programs must apply to former staff attorneys the same standards that they apply to other participating attorneys. Thus, while paragraph (e) prohibits making direct PAI payments to former staff attorneys, it does not prohibit practices such as the following: using PAI funds to reimburse former staff attorneys for actual out-of-pocket expenses incurred as the result of their participation in a project, as long as all other participating attorneys are similarly reimbursed; using PAI funds to conduct training programs in which former staff attorneys take part, as long as they do not receive preferential treatment; or using PAI funds to pay for training materials received by former staff attorneys, as long as other

participating attorneys receive the same materials.

Third, comments suggested that under the new definition recipients could not count towards PAI the work of private attorneys who practice in the same law firm with former staff attorneys since technically it is the law firm itself that represents a particular client and not just the attorney who renders the services. Because such an effect is not intended, the Board has added a proviso clarifying that paragraph (e) is not to be construed to restrict the payment of PAI funds as a result of work performed by an attorney who practices in the same firm with a disqualified former staff attorney.

List of Subjects in 45 CFR Part 1614

Legal Services, Private attorneys.

The Board voted to strike the last sentence of § 1614.1(d) which referred to the Ethics in Government Act (18 U.S.C. 207), and to add a new paragraph at the end of § 1614.1.

1. The authority citation for 45 CFR 1614 continues to read as follows:

Authority: Secs. 1007(a)(2)(C), 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

2. In § 1614.1 in paragraph (d), the last sentence is removed and a new paragraph (e) is added to read as follows:

§ 1614.1 Purpose.

* * * * *

(e) After the effective date of this regulation, no PAI funds shall be committed for direct payment to any attorney who for any portion of the previous two years has been a staff attorney as defined in § 1600.1 of these regulations; provided, however, that, for the remainder of the 1986 fiscal year, recipients may honor contractual arrangements made to such private attorneys if these arrangements were made before the effective date of this regulation; provided, further, however, that this paragraph shall not be construed to restrict the use of PAI funds in a *pro bono* or judicare project on the same terms that are available to other attorneys; and provided further, however, that this paragraph shall not be construed to restrict the payment of PAI funds as a result of work performed by an attorney who practices in the same firm with such former staff attorney.

Dated: June 10, 1986.

John H. Bayly, Jr.

General Counsel.

[FR Doc. 86-13382 Filed 6-12-86; 8:45 am]

BILLING CODE 6820-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 15)]

Revision of Abandonment Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: At 50 FR 35104, August 29, 1985, the Commission proposed rules to amend the rules governing administrative appeals of investigated abandonment initial decisions. After reviewing the comments, the Commission is amending 49 CFR 1152.25(e) (3) to require parties to file with the Commission administrative appeals from initial decisions in investigated abandonment proceedings in order to exhaust their administrative remedies before appealing the decision to a United States Court of Appeals. This amendment will satisfy one of the fundamental reasons for the exhaustion doctrine—to allow an agency to correct its own mistakes.

DATE: The rule will be effective on July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr. (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not have a signficant impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedures, Railroads.

Decided: May 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Acting Secretary.

Appendix

Title 49 of the CFR is amended as follows:

1. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

2. Section 1152.25 is amended by adding a new paragraph (e)(3) (iii) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceeding.

* * * * *

(e) * * *

(3) * * *

(iii) In order to exhaust its administrative remedies, a party must file an appeal under paragraph (e)(3)(i) of this section from the initial decision in an investigated proceeding no later than 20 days after the date the initial decision is served before seeking judicial review. In the event an appeal is timely filed, administratively final action for the purposes of this rule is deemed to occur when the Commission (A) issues its decision not to hear the appeal, (B) fails to issue such a decision within 30 days after the date the initial decision was served, or (C) hears the appeal and issues a decision on the appeal. If the Commission decides to hear the appeal, the decision to hear the appeal will operate as an automatic stay and no certificate will be issued until the Commission has acted on the appeal.

* * * * *

[FR Doc. 86-13377 Filed 6-12-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 114
Friday, June 13, 1986

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Survivor Annuity Benefits Election; Medical Examination

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend the civil service retirement regulations concerning election of survivor annuity benefits. The proposed regulations would require a retiree to pay the cost of a medical examination when electing a survivor benefit for a person having an insurable interest in the retiree. The retiree, who must show good health to qualify to make the election, is the appropriate party to bear this cost.

DATE: Comments must be received on or before August 12, 1986.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jane Lohr, (202) 632–1265.

SUPPLEMENTARY INFORMATION: At the time of retirement an employee may, under certain conditions, elect to receive a reduce annuity to provide a survivor benefit to a person who has an insurable interest in the retiring employee. Section 8339(k)(1) of title 5, United States Code, limits eligibility for this type of annuity to employees in good health.

Under OPM's current procedures, the retiree's personal physician conducts the required physical examination. OPM pays for these examinations at an average cost of $200 per case. The proposed regulations would require the retiree to pay the cost of obtaining medical evidence showing good health.

It is a well established principle that applicants for retirement bear the burden of proof on all questions concerning entitlement. Thus, they must show that they are entitled to the benefit requested. Because the applicant has this responsibility, he or she should also bear the cost of providing the necessary evidence. The proposed change would be consistent with existing practice for other personnel management actions requiring medical examinations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will ony affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pension, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 831—RETIREMENT

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

1. The authority citation for Subpart F of Part 831 continues to read as follows:

Authority: U.S.C. 8347.

2. In § 831.606, paragraph (d) is revised to read as follows:

§ 831.606 Election of insurable interest annuity.

* * * * *

(d) To elect an insurable interest annuity, an employee or member must (1) indicate the intention to make the election on the application for retirement; (2) submit evidence to demonstrate that he or she is in good health; and (3) arrange and pay for the medical examination which shows that he or she is in good health. A report of the medical examination, signed and dated by a licensed physician, must be furnished to OPM on such form and at such time and place as OPM may prescribe through the Federal Personnel Manual system or other issuances

* * * * *

[FR Doc. 86–13314 Filed 6–12–86; 8:45 am]

BILLING CODE 8325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 51, 70, 72, 73, 75, and 150

Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

Correction

In FR Doc. 86–11685 beginning on page 19106 in the issue of Tuesday, May 27, 1986, make the following correction:

On page 19109, in the second column, in the 18th line, "day cask storage" should read "dry cask storage".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 017CE, Notice No. 23–ACE–16]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 188 Series Airplanes, To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes to adopt special conditions for Petersen Aviation, Inc., modified Cessna Aircraft Company Model 188 Series airplanes to incorporate ADI provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. This notice proposes additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the

Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 017CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 017CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Type Certification Basis

For Restricted Category, Part 21 of the Federal Aviation Regulations, dated February 1, 1965; for Normal Category, Part 23 of the Federal Aviation Regulations, dated February 1, 1965. In addition (S/N 18803297 and on) FAR 23.1559, effective March 1, 1978; for the T188C only, Part 21 of the Federal Aviation Regulations dated February 1, 1965, and Part 23 of the Federal Aviation Regulations dated February 1, 1965, with exception to § 23.221, per § 21.25(a)(1). In addition, FAR 23.1559, effective March 1, 1978; Equivalent Safety Items on S/N 678T, 18802349 and on, S/N T18803307T, T18803308T, T18803325T and on, Airspeed Indicator FAR 23.1545 (see Note 7 on TCDS on use of IAS), Airspeed Limitations FAR 23.1583(a)(1); and any special conditions resulting from this proposal.

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for Supplemental Type Certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 188 Series airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA they plan substantially equivalent modifications to several other makes and models of small airplanes.

Discussion

The installation of ADI systems in small airplanes was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of alcohol and water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid systems to meet essentially the same standards as the airplane fuel system.

The FAA has considered the features proposed by Petersen Aviation, Inc., for the ADI installation in the Cessna Model 188 Series airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such systems, special conditions should be promulgated for ADI systems, in addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, special conditions are proposed.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety. The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for Cessna Model 188 Series airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) system.

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951(a) and (b), § 23.953(a) and (b), § 23.954, § 23.955(a) and (c)(1), § 23.959, § 23.961, § 23.963(a), (d), and (e), § 23.965(a)(1), § 23.967(a)(1) and (2), (b), (c), (d), and (e), § 23.969, § 23.971, § 23.973(a), (b), and (c), § 23.975(a)(1), (2), (3), (5), (6), and (7), § 23.977(a)(2), (b), (c), and (d), § 23.991, § 23.993, § 23.995, § 23.997(a), (b), (c), and (d), § 23.999, § 23.1141(a), (b), (c), (d), (f), and (g), § 23.1143(a), (e), and (f), § 23.1189(a) and (c), and § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations Part 23, dated February 1, 1965, as amended through Amendment 23-30, except as set forth in Sections 2 through 4 of these special conditions.

(2) For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Section 1 of these special conditions, as appropriate. In addition, certain listed sections are amended as follows:

(a) In § 23.955(a) General, replace the first portion of the first sentence with "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown . . . ."

(b) In § 23.955(c)(1), replace the entire subparagraph with "this flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), delete the first sentence. In the second sentence, delete the phrase, "of a single engine airplane".

(d) In § 23.971, replace paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace paragraph (a) with "(a) Primary Pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each

primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph, "(e) Be located with respect to any pressure or flow sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, delete subparagraph (b)(1).

(h) In § 23.1141(a), delete paragraphs (d) and (e) of § 23.777 which are incorporated by reference.

(i) In § 23.1141(a), delete subparagraph (e)(1) of § 23.1555 which is incorporated by reference.

(j) In § 23.1143, as applies to the control and shutoff and the ADI system, add, "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. ADI System Markings. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on June 3, 1986.

Jerold M. Chavkin,

Director, Central Region.

[FR Doc. 86-13327 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 015CE, Notice No. 23-ACE-14]

Special Conditions; Petersen Aviation, Inc., Modified Beech Model 55 Series, Model 58 Series, and Model 95( )55 Series Airplanes, To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes to adopt special conditions for Petersen Aviation, Inc., modified Beech Aircraft Corporation Model 95( )55 Series, Model 55 Series, and Model 58 Series airplanes to incorporate ADI provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. This notice proposes additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 015CE, Room No. 1501, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 015CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified in this notice. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

Type Certification Basis

The certification basis for the Beech Aircraft Corporation Model 95( )55 Series, Model 55 Series, and Model 58 Series Airplane is Part 3 of the Civil Air Regulations as amended to May 15, 1956, and Sections 23.1385(c), 23.1387(a) and 23.1387(e) of Federal Aviation Regulations, Part 23, dated February 1, 1965, as amended by Amendment 23-12; Equivalent Safety Findings: CAR Sections 3.663 and 3.757 for Models 95-B55 and 95-B55A (S/N TC-2003 and up), Models E55 and E55A (S/N TE-1084 and up), Models 58 and 58A (S/N TH-773 and up); CAR Section 3.387 for Models 95-B55 and 95-B55A (all serials), Models E55 and E55A (all serials), and Models 58 and 58A (all serials); and Part 36 through Amendment 36-10 of the Federal Aviation Regulations for Models 95-B55 (S/N TC-2285 and after), for Models E55 (S/N TEI-1171 and after), and for Model 58 (S/N TH-1090 and after) and any special conditions which result from this proposal.

Background

On August 1, 1985, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for Supplemental Type Certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Model 95( )55 Series airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA they plan substantially equivalent modifications to several other makes and models of small airplanes.

Discussion

The installation of ADI systems in small airplanes was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the aDI fluid (a mixture of alcohol and water) is a flammable liquid in the same

volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid systems to meet essentially the same standards as the airplane fuel system.

The FAA has considered the features proposed by Petersen Aviation, Inc., for the ADI installation in the Beech Model 95( )55 Series, Model 55 Series, and Model 58 Series airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such systems, special conditions should be promulgated for such systems, In addition to the applicable requirements, that will provide the necessary level of safety. Accordingly, special conditions are proposed.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft air transportation, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for Beech Model 95( )55 Series, Model 55 Series, and Model 58 Series airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) system.

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b), § 23.953 (a) and (b), § 23.954, § 23.955 (a) and (c)(1), § 23.959, § 23.961, § 23.963 (a), (d), and (e), § 23.965(a)(1), § 23.967 (a)(1) and (2), (b), (c), (d), and (e), § 23.969, § 23.971, § 23.973 (a), (b), and (c), § 23.975(a) (1), (2), (3), (5), (6), and (7), § 23.977 (a)(2), (b), (c), and (d), § 23.991, § 23.993, § 23.995, § 23.997 (a), (b), (c), and (d), § 23.999, § 23.1141 (a), (b), (c), (d), (f), and (g), § 23.1143 (a), (e), and (f), § 23.1189 (a) and (c), and § 23.1337 (a), (b) (1), (2), (3), and (4), and (c) of the Federal Aviation Regulations Part 23, dated February 1, 1965, as amended through Amendment 23-30, except as set forth in Sections 2 through 4 of these special conditions.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Section 1 of these special conditions, as appropriate. In addition, certain listed sections are amended as follows:

(a) In § 23.955(a) General, replace the first portion of the first sentence with "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown. . . ."

(b) In § 23.955(c)(1), replace the entire subparagraph with "this flow rate is required for each primary pump and each alternate pump, when the pump is supplied with normal voltage."

(c) In § 23.967(d), delete the first sentence. In the second sentence, delete the phrase, "of a single engine airplane".

(d) In § 23.971, replace paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace paragraph (a) with "(a) Primary Pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph, "(e) Be located with respect to any pressure or flow sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, delete subparagraph (b)(1).

(h) In § 23.1141(a), delete paragraphs (d) and (e) of § 23.777 which are incorporated by reference.

(i) In § 23.1141(a), delete subparagraph (e)(1) of § 23.1555 which is incorporated by reference.

(j) In § 23.1143, as applies to the control and shutoff of the ADI system, add, "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. ADI System Markings. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri on May 30, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-13329 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 25 and 121

[Docket No. 24995; Notice No. 86-5]

Airworthiness Standards; Independent Power Source for Public Address System in Transport Category Airplanes

Correction

In FR Doc. 86-11816 beginning on page 19140 in the issue of Tuesday, May 27, 1986, make the following correction:

On page 19141, in the second column, the 10th and 11th lines, should read: "making announcements is supplied to the PA system but announcements are *not* being made.

BILLING CODE 1505-01-M

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14 CFR Part 39

[Docket No. 85-ASW-8]

Airworthiness Directives; Sikorsky Model S-58 Series and Corresponding Military Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM) and reissuance of NPRM.

SUMMARY: This action withdraws a previously issued notice proposing the issuance of an airworthiness directive (AD) pertaining to tail rotor drive gears on Sikorsky Model S-58 helicopters and reissues a similar proposal on the same model helicopters except that the applicability section of the new proposal is expanded to include other civil and military versions of these helicopters which may use these same tail rotor drive gears.

DATE: Comments must be received on or before July 21, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest

Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments delivered must be marked: Docket No. 85–ASW–8.

Comments may be inspected at Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, FAA, Boston Aircraft Certification Office, ANE–153, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7102.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped/postcard on which the following statement is made: "Comments to Docket No. 85–ASW–8." The postcard will be date/time stamped and returned to the commenter.

After investigating several in-service failures of the tail rotor drive system intermediate gearbox bevel pinions and bevel gears used in certain Sikorsky helicopters, the FAA determined that an unsafe condition may exist in Sikorsky S–58 helicopters using these bevel gears and bevel pinions and issued an NPRM proposing to adopt a new AD. The AD proposed would have imposed a replacement life limit of 1,000 hours' time in service for these pinions and gears. Subsequently, it has been determined that other civil models of the S–58 series and corresponding military models of this helicopter may also use the same bevel pinion and bevel gear and thus be subject to the same failure potential as the basic Sikorsky S–58 helicopter. Therefore, the FAA is withdrawing the prior NPRM (50 FR 31193; August 1, 1985), reissuing the proposal, and making it applicable to Sikorsky Model S–58A, B, C, D, E, F, G, H, J, BT, DT, ET, FT, HT, and JT helicopters, certificated in any category, and Sikorsky military Models HH–34 series, SH–34 series, and VH–34, series certificated in any category.

Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require replacement of the intermediate gearbox bevel pinion and bevel gear prior to the accumulation of 1,000 hours' time in service on Sikorsky Model S–58 series, including military series helicopters.

Aircraft registration records indicate that this proposed regulation involves 180 aircraft with only seven operators owning four or more aircraft. The approximate cost for each compliance event and aircraft would be $3,000. For an estimated 300 hours of operation a year, the annualized cost of this action would be $900 for each aircraft or $162,000 for the fleet. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, would 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 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–58A, B, C, D, E, F, G, H, J, BT, DT, ET, FT, HT, and JT; CH–34 series; HH–34 series; SH–34 series; UH–34 series; and VH–34 series helicopters certificated in any category and fitted with tail rotor intermediate gearbox input bevel pinions Part Number (P/N) S1635–64114–0, and output bevel gears P/N S1635–64115–0. (See Note 1 for exempt pinion and gear configurations.)

Compliance is required as indicated, unless already accomplished.

(a) To preclude failure of pinions or gears identified above, accomplish the following:

(1) For applicable pinions or gears that have attained 750 or less hours' time in service of the effective date of this AD, replace with a serviceable pinion or gear, as required, prior to their accumulation of 1,000 hours' time in service.

(2) For pinions or gears that have attained more than 750 hours' time in service on the effective date of this AD, replace with a serviceable pinion or gear as required, within the next 250 hours' time in service.

(3) Operators who have not kept records of hours' time in service on individual intermediate gearbox bevel gears and bevel pinions shall substitute rotorcraft hours' time in service in lieu thereof.

Note 1.—This AD is not applicable to helicopters fitted with tail rotor intermediate gears which utilize the following pinion and gear combinations:

(a) P/N 1635–64114–101 pinion and P/N S1635–64115–101 gear.

(b) P/N 1635–64114–102 pinion and P/N S1635–64115–102 gear.

(c) P/N 1635–64114–0 pinion and P/N S1635–64115–0 gear reworked in accordance with Sikorsky Service Bulletin 58B35–26. This rework includes remarking P/N S1635–64114–0 pinion and P/N S1635–64115–0 gear with TS–200–01 and TS–200–2, respectively.

Note 2.—Refer to the Equalized Inspection and Maintenance Program Manual SA 4047–20, Revision 10, dated December 14, 1984, or later FAA-approved revision for retirement times assigned to new or modified bevel pinions and bevel gears for the Model S–58BT, DT, ET, FT, HT, and JT helicopters, and to the Maintenance Manual SA 4050–15 Section IV, revised December 14, 1984, or later FAA-approved revision for retirement times assigned to new or modified bevel pinions and gears for the Model S–58A, B, C, D, E, F, G, H, and J helicopters.

(b) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, ANE–150, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Fort Worth, Texas, on June 2, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86–13322 Filed 6–12–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-NM-123-AD]

Airworthiness Directive; McDonnell Douglas Model DC-9-10, -30, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) 80-02-16 applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes that requires radiographic (X-ray) inspections of the auxiliary emergency exit door shear pin fitting assemblies. This proposal would revise the existing applicability statement to limit the AD's applicability, and would provide a modification that constitutes terminating action for the repetitive inspection requirements of the AD.

DATE: Comments must be received no later than August 4, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 80-02-16, Amendment 39-3674 (45 FR 5669), on January 14, 1980, to require repetitive x-ray inspections for cracking of each auxiliary emergency exit door shear pin fitting assembly, and replacement of cracked assemblies. Three cases of cracked assemblies were found, and in each case, the cracks occurred through the outboard row of fasteners which attach the door stiffener fitting, door web, and frame together. The cracks have been attributed to fatigue. Undetected failure of the fittings could result in loss of retention of the aft pressure bulkhead auxiliary emergency exit door and allow rapid depressurization of the airplane fuselage.

McDonnell Douglas issued Service Bulletin 52-117, R1, dated October 6, 1982, which describes the replacement of the aft pressure bulkhead exit door asembly with a new door assembly incorporating a heavier gage metal frame, web and doubler, and a shear pin fitting of an improved design.

Since this condition is likely to exist or develop on other airplanes of the same type design, an amendment to AD 80-12-16 is being proposed to include an option to terminate the required repetitive inspections by accomplishing the modification described in McDonnell Douglas DC-9 Service Bulletin 52-117, R1, dated October 6, 1982, or later FAA-approved revisions.

With the addition of new Model DC-9 series airplanes to the type certificate data sheet, the applicability statement of the previous AD, which was previously written to affect all models then existing, is now unnecessarily board. The usafe condition upon which this AD is based is not applicable to the newer Model DC-9 airplanes. This proposed rule would amend AD 80-02-16, therefore, to limit its applicability only to those airplanes affected.

It is estimated that 139 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per mahour. Based on these figures, the total cost impact of the AD to U.S. operators would be $16,680.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not not have a significant economic impact on a substantial number of small entities because few, it any, Model DC-9 and C-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By amending AD 80-02-16, Amendemnt 39-3674 (45 FR 5669; January 24, 1980), as follows:

A. Revise the applicability statement to read:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -30, and C-9 (Military) series airplanes, Fuselage Numbers 1 through 735, certificated in any category, equipped with the aft pressure bulkhead auxiliary emergency exit door (P/N 5910367).

B. Re-identify paragraphs D. through F. as E. through G., respectively. Add a new paragraph D. to read as follows:

D. Accomplishment of modification in accordance with McDonnell Douglas DC-9 Service Bulletin 52-117, R1, dated October 6, 1982, or later FAA-approved revisions, constitutes terminating action for the repetitive inspection requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, attention: Director, Publications and Training, C1-L65 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seatttle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on June 5, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13324 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-131-AD]

Airworthiness Directives; British Aerospace Model BAe-146 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the longitudinal control system on certain British Aerospace (BAe) Model 146 airplanes. This action is prompted by reports of control column oscillation, and is necessary to prevent unacceptable handling characteristics.

DATE: Comments must be received on or before August 4, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-131-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-131-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists in the longitudinal control system on certain BAe Model 146 airplanes. Under particular combinations of speed, altitude, center of gravity, and wing fuel loads, control column oscillation has been experienced. This condition, if not corrected, can result in unacceptable handling characteristics of the airplane during flight. British Aerospace issued BAe Model 146 Service Bulletin 27-42-00671A, dated August 19, 1985, which describes changes to the pitch control system which will prevent this condition from occurring. The CAA has required compliance with this service bulletin.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,200. Document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 series airplanes, as cited in the BAe Service Bulletin 27-42-00671A dated August 19, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent control column oscillations, accomplish the following:

1. Modify the elevator control system in accordance with BAe Service Bulletin 27-42-00671A, dated August 19, 1985.

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

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

All persons affected by this proposed directive, who have not already received the applicable service document from the manufacturer, may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 5, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-13325 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 86-ANE-20]

Airworthiness Directives: Pratt & Whitney (PW) JT8D-209, -217, and -217A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of propose rulemaking (NPRM).

SUMMARY: This notice proposed to adopt an airworthiness directive (AD) that would require the removal and replacement of stage 5 low pressure compressor (LPC) blades on certain PW JT8D-200 series engines. A stage 5 LPC blade flutter boundary has been identified in the engine operating envelope within the LPC rotor speed redline limit. The proposed AD is needed to prevent flutter induced high cycle fatigue failure of stage 5 LPC blades which could result in the loss of engine power.

DATE: Comments must be received on or before September 26, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-20, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-20.

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 86-ANE-20, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-20". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that stage 5 LPC blade flutter may be experienced on certain JT8D-200 series engines in the engine operating envelope within the LPC rotor speed redline limit. Flutter of the blade could result in blade fracture and the loss of engine power. Blade flutter and subsequent failure have been demonstrated during development testing at PW. There have been no failures in service to date.

Since this condition is likely to exist or develop in other engines of the same type design, the proposed AD would require replacement of existing stage 5 LPC blades with an improved durability blade in accordance with PW SB 5618, dated November 26, 1985.

Conclusion:

The FAA has determined that this proposed regulation only involves 674 PW JT8D-200 series engines at an approximate cost of 26.2 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using McDonnell Douglas MD-80 series aircraft in which the JT8D-200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–209, –217, and –217A turbofan engines.

Compliance is required on or before October 30, 1986, unless already accomplished.

To prevent failure of the stage 5 low pressure compressor (LPC) blade, accomplish the following:

Remove from service LPC blades Part Number (P/N) 778505 and replace with LPC blades P/N 804505, in accordance with PW Service Bulletin (SB) 5618, dated November 26, 1985, or FAA approved equivalent.

Note.—Future FAA approved blade designs may be used in lieu of P/N 804505 replacement blades as an equivalent means of compliance.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on June 4, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–13330 Filed 6–12–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–ANM–7]

Proposed Revocation of Hailey, ID Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the transition area at Hailey, Idaho. The standard instrument approach procedure and the departure procedure for the Friedman Memorial Airport have been cancelled. As a result, this action proposes to return the associated 1,200 foot transition area to a non-controlled status.

DATE: Comments must be received on or before August 4, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM–530 Federal Aviation Administration, Docket No. 86–ANM–7, 17900 Pacific HIghway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM–535 Federal Aviation Administration, Docket No. 86–ANM–7, 17900 Pacific Highway South, C68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in duplicate 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. 86–ANM–7". 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 any 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 at the address listed above 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, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. 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 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 revoke the transition area at Hailey, Idaho, and return it to a non-controlled status.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hailey, Idaho—[Removed]

"That airspace extending upward from 1,200 feet above the surface from lat. 43°36'00" N, long. 114°27'00" W.; thence eastbound to lat. 43°36'00" N., long. 114°00'00 W.; thence southbound to lat. 43°17'30" N., long. 114°00'00" W.; thence westbound to lat. 43°17'30" N., long. 114°27'00" W.; thence

northbound to the point of beginning; and excluding that airspace overlying V-231 on the east side and V-500 on the south side of the area."

Issued in Seattle, Washington, on June 5, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-13134 Filed 6-12-86; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-14]

Proposed Designation of Transition Area; Montezuma, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Montezuma, Georgia, transition area to accommodate Instrument Flight Rule (IFR) aeronautical operations at Dr. C. P. Savage, Sr., Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Montezuma Non-Directional Radio Beach (RBN) which is to be located 3.7 miles north of the airport, is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATE: Comments must be received on or before July 18, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 86-ASO-14; P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

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 decision 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. 86-ASO-14." 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 Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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) that will designate the Montezuma, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Dr. C.P. Savage, Sr., Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Montezuma, GA—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dr. C. P. Savage, Sr., Airport (Lat. 32°16'15" N., Long. 84°00'15" W.); within 4.5 miles each side of the 360° bearing from the Montezuma RBN (Lat. 32°22'02" N., Long. 84°00'27" W.), extending from the 6.5-mile radius area to 11 miles north of the RBN

Issued in East Point, Georgia, on April 14, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-13393 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASO-13]

Proposed Designation of Transition Area; Thomaston, GA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Thomaston, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operations at Reginald Grant Memorial Airport. This section will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Reginald Grant Non-directional Radio Beacon (RBN), is being developed to serve the airport and the controlled airspace in required for IFR aeronautical activities.

DATE: Comments must be received on or before: July 18, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 86-ASO-13, P.O. Box 20636, Atlanta, Georgia 30320.

The offical docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763.7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

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 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. 86-ASO-13." 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 Office of the Regional Council. Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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 sumbitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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) that will designate the Thomaston, Georgia, transition area. This section will provide controlled airspace for aircraft executing a new instrument approach procedure to Reginald Grant Memorial Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Thomaston GA—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Regional Grant Memorial Airport (Lat. 32°56'20" N., Long 84°20'35" W); within three miles each side of the 225° bearing from the Regional Grant RBN (Lat. 32°56'12" N., Long 84°20'27" W.), extending from the 6.5-mile radius area to 8.5 miles southwest to the RBN.

Issued in East Point, Georgia, on April 23, 1986.

Thoman H. Protiva,

Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-13396 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 52

[Docket No. N-86-1615; FR-2119]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed changes in the list of programs subject to Intergovernmental Review.

SUMMARY: The Office of Management and Budget (OMB) has revised the criteria for determining whether programs that provide Federal financial

assistance are subject to the intergovernmental review process authorized by Executive Order 12372, "Intergovernmental Review of Federal Programs." OMB has also requested each Federal agency to reexamine the programs excluded on the basis of the old criteria to determine if these programs should be subject to the intergovernmental review process. This notice identifies each program where HUD proposes a change in the applicability of Part 52 or in which HUD has revised its reasons for excluding the program from the procedures in 24 CFR Part 52.

DATE: Comments are due August 12, 1986.

ADDRESS: Interested persons should submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Drew Allbritten, Executive Assistant to the Deputy Under Secretary for Intergovernmental Relations, Room 10184, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755-6732. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 24, 1983, the Department published a final rule at 48 FR 29206 adding 24 CFR Part 52, Intergovernmental Review of Department of Housing and Urban Development Programs and Activities, effective September 30, 1983. In accordance with § 52.3, the Department published on the same date (at 48 FR 29222), a notice identifying the HUD programs subject to the Part 52 intergovernmental review process. In developing the list of programs subject to the intergovernmental review process, the Department, in the preamble to the proposed rule (48 FR 7688, at 7697 and 7698, February 23, 1983), listed the programs it proposed to exclude from the intergovenmental review process and stated the reasons for each proposed exclusion. The reasons for the proposed exclusions were derived from criteria developed by OMB for uniform application by the Federal Departments and Agencies with programs and activities subject to Executive Order 12372.

OMB has advised HUD that certain criteria previously used to determine program coverage are rescinded. The following criteria for exclusion of a program remain in effect: (1) Proposed Federal legislation, (2) regulations and budget formulation, (3) national security matters, (4) procurement, (5) direct payments to individuals, (6) financial transfers for which Federal agencies have no funding discretion or direct authority to approve specific sites of projects, (7) research and development national in scope, and (8) assistance to federally recognized Indian tribes. OMB has provided an additional basis for exclusion of a program from the intergovernmental review procedures for financial assistance and direct development programs that do not directly affect State and local governments.

OMB has also requested HUD to review all programs excluded solely on the basis of the rescinded criteria to determine whether the programs should be made subject to the intergovernmental review process. In its initial notice (48 FR 29222, June 24, 1983), the Department stated that it would seek public comment on future changes in the list of programs subject to 24 CFR Part 52.

This notice seeks comment concerning those programs where HUD is (1) Proposing a change in program inclusion; (2) revising its justification for exclusion; (3) proposing additional exclusions; and (4) providing other clarifications. It also identifies those programs that are currently included and will remain included without any change.

The Department, after considering any comments received in response to this notice, will publish a notice containing a revised list of programs subject to 24 CFR Part 52. The revised list will not be effective until the beginning of fiscal year 1987.

Proposed Changes in Coverage of Certain Programs Currently Subject to the Part 52 Procedures

The programs listed under this heading are and will continue to remain subject to the Part 52 procedures. HUD is, however, proposing certain revisions in coverage as described below.

Multifamily Insurance Programs and Assisted Housing Programs Subject to the Part 52 Procedures

CFDA Nos. and program titles

14.112—Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects
14.115—Mortgage Insurance—Development of Sales Type Cooperative Projects
14.124—Mortgage Insurance—Investor Sponsored Cooperative Housing
14.126—Mortgage Insurance—Management Type Cooperative Projects
14.127—Mortgage Insurance—Manufactured (Mobile) Home Parks
14.134—Mortgage Insurance—Rental Housing
14.135—Mortgage Insurance—Rental Housing for Moderate Income Families
14.137—Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Rate
14.138—Mortgage Insurance—Rental Housing for the Elderly
14.139—Mortgage Insurance—Rental Housing in Urban Renewal Areas
14.151—Supplemental Loan Insurance—Multifamily Rental Housing
14.157—Housing for the Elderly or Handicapped
14.176—Section 221(d) Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects
14.509 (formerly 14.154)—Mortgage Insurance—Experimental Rental Housing

An application under the multifamily mortgage insurance and the assisted housing programs listed above is currently subject to the Part 52 procedures if the application involves (1) insurance of advances (multifamily mortgage insurance programs only), and (2) the construction or substantial rehabilitation of 200 or more units in an urbanized area or 50 or more units in a non-urbanized area.

CFDA Nos. and program titles

14.156—Lower Income Housing Assistance Program
14.174—Housing Development Grants
14.850 (formerly 14.146)—Public and Indian Housing
14.851 (formerly 14.147)—Low Income Housing—Home Ownership Opportunities for Low Income Families

An application under the assisted housing programs listed above is currently subject to the Part 52 procedures only if the application involves the construction or substantial rehabilitation of 50 or more units in an urbanized area or 25 or more units in a non-urbanized area.

The Department proposes two changes in the application of the Part 52 procedures to each of the above-described programs. First, it proposes that applications involving substantial rehabilitation be subject to the Part 52 procedures only if the rehabilitation involves: (1) A change in the use of the land; (2) an increase in project density; or (3) a change from rental to cooperative or condominium housing. The Department's experience with the current intergovernmental review process leads it to conclude that substantial rehabilitation that falls outside these three categories, namely, restoration of a project to its original condition and use, does not directly affect State and local governments.

Second, the Department proposes to eliminate all of the above-described unit thresholds. The elimination of these thresholds is in response to recommendations from State and local elected officials. With these proposed changes State and local elected officials will have the option to review all project applications under these programs that have the potential of directly affecting State and local government, regardless of the project size.

If, after consideration of the public comments, the Department makes the elimination of these thresholds final, the Department intends to revise its application procedures for the programs listed above. Currently, under these programs, when HUD receives an application that is subject to the Part 52 procedures, it notifies the State Single Point of Contact. The Department is concerned that the increased volume of applications subject to the Part 52 procedures as a result of the elimination of the threshold rules, makes notification of the State Single Point of Contact by HUD infeasible. Having applicants contact the State Single Point of Contact directly would encourage earlier State involvement and thereby expedite the intergovernmental review process. Accordingly, HUD intends to require an applicant for insurance or assistance, under one of the above-listed programs that has been selected by a State for review, to provide HUD, at the time it submits an application, with certification of the date on which it notified the State Single Point of Contact concerning its application.

Programs to Remain Excluded From the Part 52 Procedures

Each of the programs listed under this heading currently is not subject to the Part 52 procedures based on criteria that are now rescinded. HUD proposes to continue their exclusion for the reasons stated below.

Single Family Mortgage Insurance Programs

CFDA Nos. and program titles

14.105—Interest Reduction-Homes for Lower Income Families
14.108—Rehabilitation Mortgage Insurance
14.110—Manufactured (Mobile) Home Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers
14.117—Mortgage Insurance—Home
14.119—Mortgage Insurance—Homes for Disaster Victims
14.120—Mortgage Insurance—Homes for Low and Moderate Income Families
14.121—Mortgage Insurance in Outlying Areas
14.122—Mortgage Insurance in Urban Renewal Areas
14.130—Mortgage Insurance—Purchase by Homeowners of Fee Simple Title from Lessors
14.132—Mortgage Insurance—Purchase of Sales-Type Cooperative Housing Units
14.133—Mortgage Insurance—Purchase of Units in Condominiums
14.140—Mortgage Insurance—Special Credit Risks
14.142—Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Residential Structures
14.159—Section 245 Graduated Payment Mortgage Program
14.161—Single-Family Home Mortgage Coinsurance
14.162—Mortgage Insurance—Combination and Manufactured (Mobile) Home Lot Loans
14.163—Mortgage Insurance—Cooperative Financing
14.165—Mortgage Insurance—Homes—Military Impacted Areas
14.166—Mortgage Insurance—Homes for Members of the Armed Services
14.507 (formerly 14.152)—Mortgage Insurance—Experimental Homes

The Department proposes no change in the exclusion of the single family mortgage insurance programs from the Part 52 procedures. With the exception of CDDA No. 14.108 Rehabilitation Mortgage Insurance, these programs provide no federal financial assistance for construction of the housing involved. Rather, they provide an alternative source of private financing to the individual homebuyer once the housing has been constructed. The housing is developed with no federal assistance and can be constructed regardless of whether or not HUD determines that mortgage insurance will be available to eligible purchasers. The availability of single family mortgage insurance does not, itself, directly affect State and local governments. CDFA No. 14.108 Rehabilitation Mortgage does provide insurance of advances. The program, however, does not involve new construction. The insured advances must be used to finance the rehabilitation of an existing one to four unit dwelling which does not directly affect State and local government.

Health-Related Mortgage Insurance Programs

CFDA Nos. and program titles

14.128—Mortgage Insurance—Hospitals
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities and Board and Care Facilities

The Department proposes no change in the exclusion of the insurance programs that involve hospitals and nursing homes and intermediate care facilities. A facility developed under either of these programs must obtain a State agency certificate of need. While development of a project under these insurance programs may have a direct effect on State or local governments, the Department proposes to continue the current exclusion of these programs because the existing consultation procedures already provide for State involvement. Recently published regulations (50 FR 37520, September 16, 1985) added mortgage insurance for board and care homes to CFDA No. 14.129. There is no State agency certificate of need requirement for board and care facilities. Since this program may have a direct effect on State and local governments and there are no existing consultation procedures providing for State involvement, the Department proposes to include CFDA No. 14.129 under the Part 52 procedures to the extent that it involves mortgage insurance for a board and care home.

Other Programs

CFDA No. and program title

14.103—Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families

This multifamily housing mortgage insurance program (section 236 of the National Housing Act) has been phased-out. It is not included among the programs subject to the Part 52 procedures because no new applications are being accepted under this program.

CFDA No. and program title

14.141—Non-profit Sponsor Assistance Program

This program is currently excluded from the Part 52 procedures because it involves payment of financial assistance to non-governmental entities. The program provides loans to approved Section 202 sponsors to cover a portion of the expenses for planning the project. Providing this assistance, by itself, has no direct effect on State or local government and is, therefore, not being included.

CFDA No. and program title

14.149—Rent Supplement

This program is currently excluded from the Part 52 procedures because it involves payment of financial assistance to non-governmental entities The program provides payments to qualified project owners to supplement partial rental payments for qualified tenants. HUD proposes to continue the exclusion of this program from the Part 52 procedures because the program does not have a direct effect on State or local government. No new projects are being approved for rent supplement assistance.

CFDA No. and program title

14.155—Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Program

This program is currently excluded from the Part 52 procedures because it involved the provision of financial assistance to non-governmental entities. This program provides mortgage insurance to help finance the purchase of, or to refinance, an existing mulfamily project that does not require substantial rehabilitation. The Department proposes to continue this program's exclusion from the Part 52 procedures because the program does not directly affect State or local governments.

CFDA No. and program title

14.164—Operating Assistance for Troubled Multifamily Housing Projects

This program is currently excluded from Part 52 procedures because it involves payment of financial assistance to non-governmental entities. The program provides financial assistance to certain subsidized housing projects to maintain their financial soundness, assist in the management and maintain the project's low-to-moderate income character. The assistance is provided for existing projects and does not directly affect State or local government. The Department, therefore, proposes to retain this program's exclusion from Part 52 procedures.

CFDA No. and program title

14.167—Mortgage Insurance—Two Year Operating Loss, Section 223(d)

This program is currently excluded from the Part 52 procedures because it involved the provision of financial assistance to non-governmental entities. The program provides mortgage insurance to help finance the excess of expenses over project gross income incurred during the first two years following the date of completion of a project. The Department proposes to continue this program's exclusion from Part 52 because the program does not directly affect State or local governments.

CFDA No. and program title

14.403—Community Housing Resource Board Program

This program is currently excluded from the Part 52 procedures because it involved the payment of financial assistance to non-governmental entities. Under this program HUD provides financial assistance to Community Housing Resource Boards, which, in turn provide technical assistance to housing industry groups that have signed Voluntary Affirmative Marketing Agreements (VAMAs). HUD proposes to continue the exclusion of this program from the Part 52 procedures because this assistance simply provides resource to help signatories of VAMAs to carry out more effectively their voluntary marketing agreements and does not directly affect State and local governments.

Additional Programs To Be Excluded

The Department proposes to exclude the following programs that have not been previously designated either as covered or excluded or were previously designated as included.

CFDA No. and program title

14.172—Growing Equity Mortgages
14.175—Adjustable Rate Mortgages

Each of these programs is a new single family mortgage insurance program. As with the other single family mortgage insurance programs, the availability of mortgage insurance does not itself, directly affect State and local governments.

CFDA No. and program title

14.173—Section 223(f)—Coinsurnace for the Purchase or Refinancing of Existing Multifamily Projects

This is a new program that is similar to CFDA No. 14.155, Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects, in that it involves the purchase or refinancing of existing multifamily projects that do not require substantial rehabilitation. The Department proposes to exclude this program from the Part 52 procedures because it does not directly affect State or local governments.

CFDA No. and program title

14.230—Rental Rehabilitation Program

This new program provides grants to State and local governments to be used by them to rehabilitate housing and thereby increase the stock of standard affordable rental housing available to lower income tenants.

Funds are allocated by formula and grantees make the selection of specific local projects. HUD proposes to exclude this program from the Part 52 procedures because HUD does not have funding discretion authority to approve specific sites of projects.

CFDA No. and program title

14.550—Solar Energy and Energy Conservation Bank

The Solar Energy Conservation Bank provides financial assistance to support energy conservation and solar energy systems in residentail, commercial and agricultural building. The Bank allocates funds by formula to the States which administer the award of grants and subsidized loans to applicants. This program is proposed to be excluded from the Part 52 procedures because the program involves financial transfers for which the Bank has no funding discretion or direct authority to approve specific sites.

CFDA No. and program title

14.169—Housing Counseling Assistance Programs

HUD proposes to exclude this program from the Part 52 procedures. It is currently subject to these procedures. However, the program has no direct effect on State or local governments. It provides grants to HUD-approved counseling agencies which in turn provides housing counseling services to individual tenants and homeowners to help prevent and reduce delinquencies, defaults and foreclosures.

CFDA No. and program title

14.170—Congregate Housing Services Program

HUD proposes to exclude this program from the Part 52 procedures. It is currently subject to these procedures. However, the program has no direct effect on State or local governments. The program provides grants to existing public housing and section 202 projects to provide a variety of innovative approaches for delivery of meals and non-medical support services to project tenants.

Other Changes or Clarifications

CFDA No. and program title

14.116—Mortgage Insurance—Group Practice Facilities

HUD proposes to include this program under the Part 52 procedures. As with the other health-related mortgage insurance programs, this program is currently excluded from these procedures. Unlike the other health-related mortgage insurance programs for which HUD is proposing to retain the exclusion from the Part 52 procedures (see above), this program is not subject to a State certificate of need process that would provide for State consultation. Since this program could have a direct effect on State and local governments and no State consultation process exists, HUD has decided to make the program subject to the Part 52 procedures.

CFDA No. and program title

14.123—Mortgage Insurance—Housing in Older Declining Areas

This program is currently listed as excluded from the Part 52 procedures. The program, however, is not a separate mortgage insurance program. Rather,

section 223(e) of the National Housing Act authorizes HUD to use its various mortgage insurance programs to assist in the purchase or rehabilitation of housing in older declining urban areas provided the property involved is an acceptable risk, given the need for providing adequate housing for low- and moderate-income families. This more relaxed underwriting standard may be used with either single family or multifamily mortgage insurance programs. Whether a particular mortgage insurance application in an older, declining urban area is subject to Part 52 procedures is dependent upon the particular mortgage insurance program involved.

CFDA No. and program title

14.506 (formerly 143.153)—Mortgage Insurance—Experimental Projects Other than Housing

This program provides mortgage insurance to finance the development of group practice facilities and Title X land developments that use new or untried construction concepts intended to reduce construction cost, raise living standards or improve design. The non-experimental features of these projects must meet the provisions of CFDA No. 14.116—Group Practice Facilities, or of CFDA No. 14.125—Land Development. This program is currently not subject to Part 52 procedures. The Department proposes to make coverage of this program parallel to the two underlying mortgage insurance programs. Thus, group practice facilities would be subject to the Part 52 procedures for the reasons stated for CFDA No. 14.116, and land developments would be subject to the Part 52 procedures to the same extent as CFDA No. 140.125 is subject to these procedures.

Currently Included Program That Remain Unchanged

The following programs will continue to be subject to the Part 52 procedures without change.

CFDA Nos. and program title

14.125—Mortgage Insurance—Land Development and New Communities
14.218—Community Development Block Grants
14.221—Urban Development Action Grants
14.401—Fair Housing Assistance Program
14.852—Public Housing—Comprehensive Improvement Assistance Program

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

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 9, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-13426 Filed 6-12-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 594]

Winemaking Terminology

Correction

In FR Doc. 86-11882, beginning on page 19361 in the issue of Thursday, May 29, 1986, make the following corrections:

1. On page 19361, in the second column, in the **"DATE"** caption, the deadline for receipt of comments should have read "September 26, 1986".

2. On page 19362, in the third column, in the first line of the third complete paragraph, "A.T.F.Q.R." should read "A.T.F.Q.B.".

3. Also on page 19362, in the third column, in the first line of the fifth complete paragraph, "AFT" should read "ATF".

BILLING CODES 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-020]

Indiana State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

Correction

In FR Doc. 86-11233 beginning on page 18337 in the issue of Monday, May 19, 1986, make the following corrections:

1. On page 18340, in the second column, in the first line under the heading "Issues for Determination in the 18(e) Proceedings", "not" should read "now";

2. On page 18341, in the first column, in the first complete paragraph, sixteenth line, the last word should read "exit(s)"; and

3. On page 18341, in the second column, in the fourth complete paragraph, ninth line, "ISOHA" should read "IOSHA".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 774

Guidelines for Significant Revisions; Availability of Petition to Initiate Rulemaking

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

ACTION: Notice of availability of a petition to initiate rulemaking and request for comments.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) has received a petition submitted pursuant to section 201(g) of the Surface Mining Control and Reclamation Act (SMCRA) to initiate rulemaking. OSMRE is seeking comments regarding the rule changes suggested in a petition. The requested change would amend OSMRE's regulations to establish guidelines for determining whether a proposed revision to an existing permit is significant.

Draft guidelines have been proposed by OSMRE's Division of Tennessee Permitting in Knoxville, Tennessee, for use in reviewing permit revision applications in Tennessee. The petition is in response to these draft guidelines. The petitioners seek to have these guidelines treated as rules and subject to the Administrative Procedure Act; they also seek specific changes in the draft criteria.

Although the guidelines addressed by the petitioners apply only to revisions of permits in Tennessee, the scope of the petition is not clear. OSMRE is uncertain whether the petition seeks to initiate national rulemaking or only to amend the Federal program for Tennessee.

Comments on the rule changes suggested in the petition will assist the Director of OSMRE in making a decision whether to grant the petition for the Federal program for Tennessee, grant the petition for national rulemaking, or deny the petition.

DATES: OSMRE will accept written comments until 4:00 p.m. Eastern Daylight Time, July 14, 1986.

ADDRESS: *Hand-deliver* to the Office of Surface Mining Reclamation and Enforcement, Division of Permit and Environmental Analysis, Room 5121, 1100 L Street, NW., Washington, DC, or *mail* to the Office of Surface Mining Reclamation and Enforcement, Division of Permit and Environmental Analysis, Room 5121, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Catherine Roy, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement; telephone (202) 343–1475.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments on the suggested rule change should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the administrative record on the petition. OSMRE cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESS"** above will be considered and included in the administrative record on this petition.

Availability of Copies

OSMRE has attached to this notice a portion of the petition. Complete copies of the petition and related documents, including the most recent draft guidelines, may be obtained at the location listed under **"ADDRESS"**.

Public Meetings

OSMRE will not hold a public hearing on the petition; however, OSMRE personnel will be available to meet with the public during business hours (8:00 a.m. to 4:00 p.m. weekdays) during the comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT."**

II. Background

In the fall of 1985, OSMRE circulated to interested groups draft guidelines to establish guidance for determining whether a proposed permit revision in Tennessee was significant. These guidelines proposed specific criteria for significant revisions, including increases in certain activities such as blasting, additions such as a coal processing facility or coal processing facility waste disposal area, and changes in the permit area. Generally, these changes involved environmental issues. Examples included changes potentially affecting water quality or quantity that would affect the findings of the probable hydrologic consequences (PHC) or assessment of cumulative hydrologic impacts (CHIA), changes in land use from nonindustrial or noncommercial to industrial or commercial, and changes relating to an issue that had been commented on by the public or another agency previously.

The draft guidelines also included criteria for nonsignificant revisions. These included increasing the permit term (to as much as five years), changes in ownership structure that do not change the name or address of the permittee, deletion of an undisturbed portion of the permit area, increases in the amount of coal removed that would not result in increased impacts that were not already addressed in the original permit application, redesign of drainage control structures, changes in the mining cut or sequence, and retention of siltation structures as permanent.

The agency has now received a rulemaking petition on behalf of four organizations (Environmental Policy Institute, Legal Environmental Assistance Foundation, Illinois South Project, and Save Our Cumberland Mountains). The petition requests that these draft guidelines be treated as rules and subject to the informal rulemaking procedures of the Administrative Procedure Act. The petitioners also ask for specific changes in the draft guidelines. The most recent draft of the guidelines, dated January 2, 1986, includes several of the changes requested by the petitioners.

Issues that are the subject of this petition generally fall into three areas: criteria proposed by OSMRE for insignificant revisions that the petitioners believe should be significant, criteria proposed by OSMRE for significant revisions but for which the petitioners seek changes, and an additional criterion for significant revisions proposed by the petitioners.

The petitioners ask that increases in permit terms, redesign of drainage control structures, and retention of siltation structures as permanent be considered significant revisions. The petitioners ask that any addition of a coal processing facility, changes in postmining land uses (not just those from noncommercial or nonindustrial to commercial or industrial), and any increase in the area above underground workings be considered as significant revisions. The petitioners also supported any change that would result in an alteration of the findings at 30 CFR 773.15 as a criterion for a significant revision (originally proposed by OSMRE but deleted in a later draft) and any increase in the strength or frequency of blasting (originally proposed by OSMRE in a more limited form but deleted altogether in a later draft). The petitioners seek to add any change in topsoil or soil retention plans as a criterion for significant revisions.

The petititon is unclear as to the scope that is intended. OSMRE is uncertain whether the petitioners seek national rulemaking or rulemaking for the Federal program for Tennessee only. The petitioners' justification for the petition is printed as an appendix to this notice.

Section 201(g) of SMCRA allows any person to petition for a change in OSMRE's permanent program rules. Under the applicable regulations for rulemaking petitions (30 CFR 700.12), the Director may, before deciding whether to accept or deny the petition, determine whether the petition has a reasonable basis and, if so, seek comments from the public on the proposed change.

At the close of the comment period, a decision will be made as to whether to grant the petition for Tennessee, grant the petition on a national basis, or deny the petition. If the decision is to grant the petition, rulemaking proceedings will be initiated in which public comments will again be sought before any final rulemaking notice appears. If the decision is to deny the petition, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision were made to grant the petition, a formal rulemaking process would be initiated. Thus, no regulatory flexibility analysis is needed at this stage nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322[2][C], is needed.

List of Subjects in 30 CFR Part 774

Reporting and recordkeeping requirements, Surface Mining, Underground Mining.

Dated: June 9, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

Appendix

The basis of the petition dated January 27, 1986, is as follows:

Petition for Rulemaking

In accordance with the federal regulations at 30 CFR 700.12, the undersigned hereby submit this petition for a rulemaking proceeding on the proposed guidelines for permit revisions. This petition is premised on the belief that OSM's decision to promulgate guidelines without publication in the **Federal Register**, without a full opportunity for public comment, without requiring a basis and purpose statement to accompany a final rule, and without assurance that the guidelines will be binding on those who will administer them violates the federal Administrative Procedure Act.

The substance of our petition is set forth in the comments that have been prepared on the proposed guidelines. Plaintiffs ask the Director to promulgate proposed rules that are consistent with those comments, a copy of which is appended to this petition. The legal justification for this petition is as follows:

OSM's decision to develop guidelines for determining when permit revisions are significant so as to require the opportunity for public review and comment under section 511 of the federal Act, demonstrates its belated recognition of the fact, long held by citizen groups, that further guidance must be provided the states, industry and the public on this important issue. Having reached this conclusion, however, OSM has apparently decided to proceed by promulgating "guidelines" rather than "rules" which accord with the requirements of the APA.

There is no question that the proposed guidelines are rules within the meaning of the APA. Section 2(c) of the APA defines a "rule" as "an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy, or describing the organization, procedure or practice requirements of an agency . . . ." 5 U.S.C. 551(4). The proposed guidelines are, without question, an agency statement of general applicability and future effect designed to interpret federal law. Accordingly they are rules within the meaning of the APA.

The informal "notice and comment" rulemaking requirements of the APA apply to all rules except those that can be characterized as "interpretative rules, general statments of policy, or rules of agency organization, procedure, or practice", (5 U.S.C. 553(b)(3)(A)), or where the agency finds "for good cause . . . that the notice and public procedure are impractical, unnecessary or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). Even where one of these findings are made, the rules must still be published in the **Federal Register**. *See* 5 U.S.C. 552(a)(1).

In this case, however, neither of the exceptions from notice and comment apply. First, the exceptions contained at 5 U.S.C. 553(b)(3)(A) do not apply in circumstances where the agency action might jeopardize the rights and interests of individuals. *Batterton v. Marshall*, 648 F.2d 694 (D.C. Cir. 1980). The adoption of the proposed guidelines by OSM may seriously jeopardize the interests of citizens who live or work near coal mines because the guidelines may deny those citizens the right to comment on certain types of permit revisions that may adversely affect their interests. Further, the exceptions at 5 U.S.C. 553(b)(3)(B) cannot apply here because OSM has acknowledged, by allowing a limited right of comment on the proposed guidelines, that notice and comment is both practical and necessary.

In addition to providing the public with the opportunity to participate more fully in the proceedings to develop standards for significant permit revisions, informal rulemaking will have two other salutary impacts. First, it will assure that the final rules include a statement of basis and purpose. This statement, which is required by 5 U.S.C. 553(c), must include the agency's response to significant comments that are made by the public during the comment period. *Home Box Office v. FCC*, 567 F.2d 9 (D.C. Cir. 1977). Second, and most importantly, rules, unlike guidelines, are binding on those to whom they apply. There would be little purpose served in developing standards for significant permit revisions if the persons to whom those standards are directed are not bound to adhere to those standards.

For these reasons, we believe that OSM has no choice but to proceed by the informal rulemaking requirements of 5 U.S.C. 553. *See also* 30 U.S.C. 1251(b).

Despite the lateness of OSM's recognition of the need for providing guidance to the state and federal governments on the identification of significant permit revisions, we are pleased that OSM has decided to take this step. We do not believe, however, that there is any basis for denying citizens their procedural rights to participate in the development of those standards, which are guaranteed by the Administrative Procedure Act. Accordingly, we ask OSM to grant this petition for rulemaking without delay.

Respectfully submitted,

Carol Nickle, 530 Gay Street, Suite 204, Knoxville, TN 37902.

Mark Squillace, West Virginia University College of Law, P.O. Box 6130, Morgantown, WV 26505.

This petition is submitted on behalf of the following organizations:

Environmental Policy Institute, 218 D St., SE., Washington, DC 20003.

Legal Environmental Assistance Foundation, 530 Gay St., Suite 204, Knoxville, TN 37902.

Illinois South Project, 116½ West Cherry Street, Herrin, IL 62948.

Save Our Cumberland Mountains, P.O. Box 457, Jacksboro, Tennessee 37757.

[FR Doc. 86-13378 Filed 6-12-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[OAR-FRL-3031-5]

Air Program; Stratospheric Ozone Protection Activities

AGENCY: Environmental Protection Agency.

ACTION: Announcement of upcoming workshop and conference.

SUMMARY: This notice provides information on an upcoming workshop and conference related to stratospheric ozone protection (51 FR 1257; January 10, 1986). The workshop, scheduled for July 23–24 in Washington, DC, focuses on alternative control strategies to protect stratospheric ozone. The conference, previously announced in the **Federal Register** in February (51 FR 5091; February 11, 1986), is scheduled for June 16–20 also in Washington, DC. It is being cosponsored by the United Nations Environment Programme and the U.S. Environmental Protection Agency and is titled "Health and Environmental Effects of Ozone Modification and Climate Change." This notice sets forth the time and location of these meetings, and provides information for people who would like to present papers at the July workshop. EPA encourages the public's participation in these and other upcoming activities related to the issue of protecting the ozone layer.

DATES: Workshop on Alternative Control Strategies for Protecting the Ozone Layer; July 23–24, 1986. International Conference on Health and Environmental Effects of Ozone Modification and Climate Change; June 16–20, 1986.

ADDRESSES: Workshop on Alternative Control Strategies for Protecting the Ozone Layer; Washington Hilton Hotel, Washington, DC 20009. International Conference on Health and Environmental Effects of Ozone Modification and Climate Change; Hyatt Regency Crystal City, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Stephen Seidel, U.S. Environmental Protection Agency, PM-220, 401 M Street SW., Washington, DC 20460, (202) 382-2787.

SUPPLEMENTARY INFORMATION: In early January 1986, EPA announced its program plan for examination of issues related to protection of stratospheric ozone (51 FR 1257; January 10, 1986). The goal of this plan was to provide a sound

scientific and technical basis for future Agency decision-making related both to the domestic and international aspects of this issue.

As part of the plan EPA identified a series of workshops and conferences related to specific aspects of that issue. A **Federal Register** notice in February presented general information on the International Conference on Health and Environmental Effects of Ozone Modification and Climate Change. This announcement provides more specific information on this conference and presents general information on the July Workshop on Alternative Control Strategies for Protecting the Ozone Layer (51 FR 5091; February 11, 1986).

Workshop on Alternative Control Strategies for Protecting the Ozone Layer

This workshop is scheduled for July 23–24 in Washington, DC. It will focus specifically on evaluation of various possible regulatory strategies for protection of the ozone layer.

General topics that will be addressed at this meeting include:

—Identification of possible strategies, including such nontraditional alternatives as quotas and financial incentives
—Effects of control strategies on the future demand, production, and emissions of potential ozone-modifying substances
—Effects of control strategies on the atmosphere and the environment
—The cost-effectiveness of control strategies
—Issues of equity, trade impacts, and ease of implementation and monitoring

EPA is encouraging broad participation and discussion of the issues presented above. The two-day workshop will be structured to allow for maximum participation of interested parties.

This meeting serves as the preliminary step in preparation for the United States' participation in an upcoming workshop on the same issues sponsored by the United Nations Environment Programme (UNEP) and scheduled for September 8–12, 1986, in the Washington, DC area. This and related UNEP workshops are aimed at providing an expanded information base and increasing dialogue among nations before international negotiations concerning possible global strategies to protect the ozone layer resume in late 1986.

Papers presented at this July workshop will also be included as part of the United States' preparation for the UNEP workshop in September, 1986. Parties interested in preparing papers or otherwise participating should contact Stephen Seidel at the address provided above before June 30, 1986.

International Conference on Health and Environmental Effects of Ozone Modification and Climate Change

Convincing evidence demonstrates that human activities are changing the makeup of the earth's atmosphere. Recent studies by leading international scientific organizations raised concern that if such changes continue, the ozone layer and climate could be modified. EPA and UNEP are co-sponsoring this conference in an effort to bring together researchers, industrial planners, health professionals, and policy-makers concerned about the potential health and environmental consequences if this modification occurs.

Topics to be addressed at this conference include the potential effects of increased ultraviolet radiation on skin cancer, suppression of the human immune system, alternations in agricultural productivity, modifications of the aquatic food chain, increases in oxidant formation and accelerated degradation of materials. The effects related to changes in climate (i.e. the greenhouse effect) that will be discussed include alterations of precipitation and water resources, increases in sea level, and changes in agricultural and forest productivity.

Over 60 internationally renowned researchers will present their latest findings in a range of areas.

Professionals concerned with strategic issues in the following areas may be interested in attending one or more days of the conference:

—Public works decisions involving water resources
—Coastal planning and development
—Agricultural management and planning
—Public health planning
—Production and use of paints and plastic materials
—Air pollution control programs
—Forestry management.

Professionals involved in evaluating project feasibility, design, and impact for private industry, governments, and funding agencies in any of the above areas should find the information presented at this conference of direct benefit to their activities.

Infomation and brochures concerning the July 23–24 workshop and June 16–20 conference can be obtained by contacting Stephen Seidel at the address given above.

Dated: June 6, 1986

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–13388 Filed 6–12–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[Region II Docket No. 58; A–3–FRL–3031–3]

Approval and Promulgation of Implementation Plans; Proposed Revision to the New York State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice proposes, with some minor exceptions, Environmental Protection Agency (EPA) approval of several revisions to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds (VOCs).

It includes a finding that the State has met two commitments made in its 1982 ozone and carbon monoxide SIP for the New York City metropolitan area. The first commitment was to adopt, if necessary, a regulation for the manufacture of high-density polyethylene, polypropylene and polystrene resins (a source category covered by a Group III Control Techniques Guideline). The State has now determined that no such sources exist in New York, so no regulation is necessary at this time. The second commitment was to develop a procedure for use in the granting of variances from certain State requirements for controlling emissions of volatile organic compounds.

Such a procedure has been developed and is proposed for approval with the qualification that all such variances must receive EPA approval before they become part of the SIP.

This notice also deals with proposed revisions to the following State regulatory requirements directed at controlling the emissions of VOCs from several categories of stationary air pollution sources:

- Part 200—"General Provisions."
- Part 228—"Surface Coating Processes."
- Part 229 (old)—"Petroleum Liquids Storage and Transfer."
- Part 229 (new)—"Petroleum Liquids Storage Facilities."
- Part 230 (new)—"Gasoline Dispensing Sites and Transport Vehicles," and
- Part 234—"Graphic Arts."

Although these revisions are generally approvable, EPA did identify an issue associated with the State's interpretation of a term used in Part 228. Upon State submittal of additional information concerning this term, EPA will publish a supplemental notice on the adequacy of this proposed change. EPA is also proposing to disapprove portions of Parts 228 and 234; however, this does not significantly affect the overall approvability of the package or affect the State's ability to meet its SIP commitments.

DATES: Comments must be received by July 14, 1986.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: In its 1982 ozone and carbon monoxide State Implementation Plan (SIP) for the New York City metropolitan area (Comprised of New York City and Nassau, Suffolk, Westchester and Rockland Counties) New York State committed to adopt regulations for source categories covered by the Environmental Protection Agency's (EPA's) Group III Control Techniques Guidelines (CTGs) or, alternately to certify that no sources covered by these CTGs exist in the State. The State also committed to develop a volatile organic compond (VOC) control measure, "Reevaluation of RACT." This measure was to require that a source previously granted a variance from reasonably available control technology (RACT) requirements be reevaluated when its certificate to operate expired in order to determine whether the variance should be retained on recertification of the source.

In addition, the State committed to make various regulatory revisions to provide additional VOC emission reductions. These included adopting a regulation requiring the inspection and repair, when necessary, of gasoline tank trucks, and the regulation of external floating roof tanks.

The State also committed to revise its bubble provisions for sources that include both printing and surface coating operations.

High-Density Polyethylene, Polypropylene and Polystyrene Resins

In a letter dated November 2, 1984, New York addressed EPA's requirement that it adopt a regulation for the control of VOC emissions from the manufacture of high-density polyethylene, polypropylene, and polystyrene resins. This requirement was established by EPA's publication of a Group III CTG document entitled, "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins." New York's November 2, 1984 submission indicates that, upon investigation, it has determined that there are no sources in New York involved in the manufacture of highdensity polyethylene, polypropylene, or polystyrene resins. Consequently, there is no need for New York to develop a regulation for this source category. However, the State has committed to develop such a regulation should a source apply for a permit to manufacture these resins if at that time there are no applicable New Source Performance Standards (NSPS) promulgated under Section 111 of the Clean Air Act.

EPA proposes to find that the State has fulfilled its obligation to either adopt a regulation for this source category or to clarify that there are no sources within the affected nonattainment area.

Air Guide 20—Variances From RACT Regulations for VOC Emitting Sources

In its 1982 ozone and carbon monoxide SIP for the New York City metropolitan area (NYCMA) New York committed to implement a measure entitled, "Reevaluation of RACT." This measure was intended to make more restrictive the criteria under which a source emitting VOCs may apply for and be granted a variance from State requirements to apply RACT to its operations.

To meet its SIP commitment New York has developed Air Guide 20 "Variances from RACT Regulations for VOC Emitting Sources." A copy of this Air Guide, dated July 25, 1984, was submitted to EPA on December 31, 1984. Air Guide 20 provides detailed procedures that the State will follow in evaluating such a variance. The procedures apply to initial variance applications and to subsequent ones. The need for such variance must be demonstrated by the applicant and must be based on economic or technical factors unique to the source. They provide for periodic reevaluations of approved variances and for their submittal by the State to EPA as SIP revisions.

These features provide guidelines useful to the Commissioner in his decisions on whether to grant variances. Therefore, EPA proposes to find that this Air Guide fulfills New York's commitment in its SIP. EPA notes, however, that each variance adopted under Air Guide 20 must receive EPA approval before it can become part of the SIP.

State Regulatory Revisions

On March 15, 1985 New York submitted to EPA adopted revisions to State regulations currently contained in its SIP. These revisions to Title 6 of the New York Code of Rules and Regulations (NYCRR) effect the following Parts:

- Part 200—"General Provisions," effective April 11, 1985.
- Part 228—"Surface Coating Processes," effective April 11, 1985.
- Part 229 (old)—"Petroleum Liquids Storage and Transfer," effective June 21, 1980.
- Part 229 (new)—"Petroleum liquid Storage Facilities," effective April 11, 1985.
- Part 230 (new)—"Gasoline Dispensing Sites and Transport Vehicles," effective April 11, 1985.
- Part 234—"Graphic Arts," effective April 11, 1985.

Following is a brief summary of EPA's review and findings with regard to these revisions.

Part 200—General Provisions

Since EPA's last approval of revisions to Part 200 (49 FR 3439, January 26, 1984), the regulation has been revised three times.

The first revision involved technical amendments, which generally corrected typographical errors and included other non-substantive changes. The second and third revisions were made to meet new State Incorporation By Reference (IBR) requirements. Part 200 now contains a new § 200.9, including a Table 1, which lists documents that are referenced in other Parts of 6 NYCRR. Generally these documents are "EPA Reference Test Methods" that appear in Title 40 of the *Code of Federal Regulations*. References to these documents are also included in the various Parts of 6 NYCRR and were included only after the regulations had gone through formal State adoption

procedures. The State is now obligated to revise Part 200 when other Parts of its Code are revised and new references are included.

EPA is proposing to approve the latest version of Part 200, which has an effective date of April 11, 1985. This version contains earlier revisions with effective dates of August 9, 1984 and December 5, 1984.

Part 228—Surface Coating Processes

Part 228 has been revised to limit "facility wide emission reduction plans" (bubble provisions) in the NYCMA only to sources covered by the provisions of Part 228. Previously, a facility-wide emission reduction plan could include sources covered by other Parts of 6 NYCRR, for example Part 234, "Graphic Arts."

It should be pointed out, however, that EPA is not approving New York facility-wide emission reduction plans for automatic inclusion in the SIP. While EPA is proposing to find that this revision to Part 228 fulfills the State's commitment in its SIP to develop a measure entitled, "Controls at Major Facilities," the plan for each facility must be submitted to EPA as a SIP revision. This is consistent with EPA's past treatment of the VOC facility-wide emission reduction plan provisions in the New York SIP at and after the time these regulations were approved. EPA intends to codify this approach when it takes final action.

The State has made two substantive changes to Part 228. The first involves the inclusion in § 228.3(d) of a variance provision which permits seasonal shutdowns of emission control equipment.

EPA policy, as contained in a memorandum dated December 10, 1980, from Walter Barber, the former Director of EPA's Office of Air Quality Planning and Standards to the Regional Directors of Air and Hazardous Materials Divisions, permits the shutdown of natural gas-fired afterburners used to control VOCs during that period of the year not conducive to ozone formation. (November through March in the New York area). This policy states, however, that variances cannot be granted to flares, VOCs vented to boilers, afterburners operated principally for odor control, or afterburners operated to control toxic or hazardous substances. Furthermore, the issuance of appropriate variances must be implemented through the SIP process. Because the State provides no limitations on the type of control equipment covered, type of fuel used, permitted shutdown period, or affected operations, EPA is proposing to disapprove the provision of § 228.3(d) as it relates to "seasonal use of control equipment." Should the State revise this general provision for seasonal shutdowns to make it consistent with EPA's policy and submit it as a SIP revision, EPA would propose to approve it.

EPA will still process any SIP revision request which involves a seasonal shutdown variance for a specific source. Should the variance meet all of the EPA criteria as specified in the December 10, 1980 memorandum, EPA would propose to approve it for inclusion in the SIP.

The second substantive change involved the restructuring of § 228.3 (a) and (b). Section 228.3(a) now specifically prohibits a source from using coatings which exceed the RACT limits, expressed as pounds of VOC, minus water, per gallon of coating at application, currently contained in Tables 1 & 2 of the regulation. These limits have been previously approved (45 FR 74472, 11/10/80 and 49 FR 3439, 1/26/84) and are not being changed. Section 228.3(b) now requires that any source which desires to meet the RACT limits by another method or combination of methods, must specifically apply to the State for an equivalent RACT variance. Typically a source could use physical or operational changes, the addition of control equipment, or any combination to meet the RACT limits.

Since EPA policy and guidance permits a source to meet the RACT limits by any of the above mentioned methods, it should not be necessary for the State to submit these equivalency variances to EPA as SIP revisions provided that the State submits a detailed explanation of the criteria which will be used in granting such variances. Specifically, § 228.3(b)(1) the State allows a source applying for an equivalency variance to take credit for "physical and operational changes." These terms, however, are not defined in the regulation and it is not clear what methods will be used in determining equivalency. While EPA policy and guidance permits credit for some types of physical and operational changes, not all such changes are creditable. The State has indicated its intention to submit additional information on what types of "physical and operational changes" are creditable and the procedures and calculation methods to be used to quantify the emission reductions. When this occurs, EPA will publish a supplemental notice of its evaluation of this additional information and will request public comment.

The State also clarified the applicability of Part 228 by including a new Section, § 228.1(f). This new section states that a source must continue to comply with Part 228 even after the area in which it's located has been redesignated to attainment for ozone.

In summary, EPA is proposing to approve Part 228 dated April 11, 1985, with the exception of § 228.3(d), provided that the State submits additional information on the types of "physical and operational changes" that are creditable and this is consistent with EPA policy and guidance. EPA is proposing to disapprove § 228.3(d) as it relates to seasonal shutdown of VOC control equipment since it does not meet EPA criteria. EPA is awaiting additional information from the State on its definition of the term "physical and operational changes" as used in § 228.3(b)(1). Finally, EPA also proposes finding that the State has fulfilled its commitments made in the SIP for developing the control measure "Controls at Major Sources."

Part 234—Graphic Arts

As with Part 228, Part 234 has been revised to limit facility wide emission reduction plans (bubble provisions) in the NYCMA to only sources covered by the provisions in Part 234. In addition, the State included a seasonal shutdown variance similar to the one discussed earlier in relation to Part 228. The State also made other minor changes to Part 234.

The results of EPA's review and findings with respect to Part 228 also apply to Part 234 in relation to its facility wide emission reduction and seasonal shutdown provisions. Therefore, with the qualifications discussed above, EPA is proposing to approve the April 11, 1985 version of Part 234, with the exception of § 234.3(c). EPA is proposing to disapprove § 234.3(c) as it relates to seasonal shutdown, since it does not meet EPA criteria. EPA also proposes finding that the State has fulfilled it's commitment made in the SIP for developing the control measure "Controls at Major Sources."

Part 229—Petroleum Liquid Storage Facilities

Part 229 has been revised by adding a new section which regulates external floating roof storage tanks and by removing gasoline filling station requirements from Part 229 and placing them in new Part 230 (Gasoline Dispensing Sites and Transport Vehicles). A number of minor changes have also been made to Part 229. The State now considers Part 229 to be a new regulation; the previous version of this regulation has been repealed. All previous requirements that are not

discussed below and all compliance dates remain the same.

The State has adopted requirements for the control of VOC emissions from petroleum liquid storage in external floating roof tanks (EFRT). These requirements are applicable to EFRT which have a capacity of 40,000 gallons or more, which contain VOCs with a true vapor pressure of 4.0 pounds per square inch or greater and which are located in an area that is designated as nonattainment for ozone. These tanks must have a continuous rim mounted secondary seal, which must be maintained without any visible holes, tears, or openings. The regulation contains additional requirements which minimize VOC emissions and which require inspections and record keeping. These requirements are consistent with those recommended in the CTG.

The State is limiting the applicability of Part 229 only to areas in nonattainment of the ozone standard as of the effective date of the current revision of the regulation (that is, April 11, 1985). It should be noted that the only ozone nonattainment area in New York as of this date is the NYCMA. All other areas are in attainment of the standards.

Part 229 also contains a variance provision which permits the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) to accept alternative controls when a facility is unable to comply with the specific requirements contained in the regulation. The source must demonstrate that technological and/or economic reasons justify an alternative approach to control and that the new requirement provides for RACT for the specific facility. In this regard it should be noted that EPA cannot recognize any variance or alternate requirement until it is submitted to EPA by the State for approval as a SIP revision. Approval will be based on the effect of the proposed variance on air quality and on the ability of a facility to comply with the existing regulation.

EPA is proposing to find that Part 229 adequately addresses the requirements for EFRT and is proposing to approve it.

Part 230—Gasoline Dispensing Sites and Transport Vehicles

The State has promulgated a new regulation, Part 230, which contains requirements that were previously contained in Part 229 for gasoline dispensing sites and tank trucks. These requirements and their associated compliance schedules have not been substantially changed. In addition, the State had added requirements for gasoline tank trucks that deliver gasoline in the NYCMA or to gasoline dispensing sites which are required to install Stage I vapor controls. This addresses the requirements for the State to adopt a regulation for a Group II CTG catetory, "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems."

Gasoline tank trucks are now required to meet specific pressure and vacuum standards and must be tested annually to insure that they are met. A tank truck must be repaired within fifteen days if it fails the inspection and must be marked with the date it last passed inspection. There are also record keeping requirements for these inspections. Part 230 also restricts the pressure and vacuum under which the tank can be loaded and unloaded, respectively.

Part 230 also contains a variance provision, § 230.7, which permits the Commissioner of the NYSDEC to accept alternative control requirements. This is similar to the variance provision discussed in relationship to Part 229. Again EPA cannot recognize any such variance until it is submitted and approved as a SIP revision.

EPA is proposing to find that Part 230 adequately addresses the requirements for control of gasoline tank trucks and is proposing to approve it.

Conclusion

EPA is today proposing to find that the State had fulfilled its commitment to either adopt regulations for or to certify that there are no applicable sources within the State for the manufacture of high-density polyethylene, polypropylene and polystyrene resins. EPA also is proposing to find that the State has fulfilled its commitment to develop procedures to evaluate variances from its VOC regulations. With the qualifications discussed above, EPA is proposing to approve the revisions made to Parts 200, 229, 230, and 234 (except for § 234.3(c)) as a part of the New York SIP. EPA is proposing to approve Part 228 with the exception of §§ 228.3(b)(1) and 228.3(d) as a part of the New York SIP. EPA is awaiting additional information clarifying terms used in § 228.3(b)(1). EPA will publish a supplemental notice of proposed rulemaking concerning this additional information and final action will be dependent on EPA's analysis of the comments it receives on both today's and this future notice. EPA is proposing to disapprove §§ 228.3(d) and 234.3(c) as they related to seasonal shutdowns.

This notice is issued as required by Section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: November 19, 1985.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 86–13390 Filed 6–12–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 86–037]

Documentation of Forfeited Vessels

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to revise the regulations concerning the documentation of vessels forfeited for a breach of the laws of the United States. The revised regulations would recognize administrative forfeiture proceedings and the effect of forfeiture on liens and encumbrances of record. Recent statutory changes affecting the maximum value of vessels subject to administrative forfeiture proceedings has resulted in an increase in the number of vessels eligible for documentation being forfeited in this manner. Existing regulations only recognize judicial forfeiture and do not take into account that a forfeiture results in the vessel being cleared of existing liens and encumbrances. These changes will improve the marketability of vessels forfeited and allow vessel purchasers to realize the full benefits of a vessel with a clear title and domestic trade entitlements.

DATE: Comments must be received on or before July 14, 1986.

ADDRESS: Comments should be submitted to and are available for examination at the Marine Safety Council (G–CMC), Room 2201, U.S.

Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Between the hours of 7:00. a.m. and 4:00 p.m., Monday through Friday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G–CMC).

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory L. Oxley, Staff Attorney, Merchant Vessel Documentation Division, Office of Merchant Marine Safety, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, 202–426–1492.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD 86–037) and the specific section to which each comment applies, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a self-addressed, stamped envelope or postcard. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed regulations may be changed in light of comments received. No public hearing is planned.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Gregory L. Oxley, Project Manager, and Commander Ronald Zabel, Project Attorney.

Background

Entitlement to engage in the domestic trades (coastwise trade, Great Lakes trade, and the fisheries) is reserved for vessels built in the United States. However, since 1792 there have been exceptions for vessels adjudged forfeited to the United States for violation of its laws. The current provisions are in 46 U.S.C. 12106–08. The statute is silent on what type of forfeiture action is required. The Coast Guard and its predecessor agencies (including the Customs Service) in administration of the documentation laws have only recognized a judicial forfeiture as a basis for the granting of domestic trade entitlements.

The Bureau of Marine Inspection and Navigation, a predecessor of the Coast Guard in administration of the documentation laws, in 1941 amended the regulations to clarify what constituted a forfeited vessel. Those regulations required an affidavit attesting that the vessel was "[a]djudged to be forfeited for a breach of the laws of the United States, by a decree, sentence, or judgment of the ——— court of ———, ..." When the Customs Service assumed responsibility for administration of the documentation laws in 1943, new regulations were issued. Those regulations provided that "[a]ny vessel which has been judicially forfeited" is eligible for domestic licenses. The Coast Guard assumed responsibility for administration of the documentation laws in 1967 and issued regulations essentially identical to the Customs regulations. In 1982, the Coast Guard changed the regulation to the existing one at 46 CFR 67.19–5 which provides that:

(a) A forfeited vessel is:

(1) One which has been adjudged forfeited, by a federal district court, to the federal government of the United States for a breach of its laws; or

(2) One which has been seized by the federal government of the United States for a breach of its laws and which has been sold at an interlocutory sale, the proceeds of which have been adjudged forfeited to the federal government of the United States by a federal district court.

(b) The applicant must submit a certified copy of the court order declaring the vessel itself to be forfeit or the proceeds of its sale to be forfeit to the federal government of the United States to establish that the vessel is forfeited within the meaning of this section.

Administrative forfeiture provisions have existed for many years, however prior to 1978 they were only available where the property value did not exceed $2500. In 1978 the value limit was raised to $10,000. Since few vessels of a size eligible for documentation came under these limits, documentation was not a problem. In 1984 the statute was amended to provide that if the value of a seized vessel is less than $100,000, or if the vessel was used to import, export, transport, or store any controlled substance, an administrative forfeiture action may be initiated. With the amendment, many vessels eligible for documentation which previously could have only been judicially forfeited were now eligible for administrative forfeiture action as well. Since a judicial forfeiture can take several years to complete and cost the government thousands of dollars in custody costs and legal expense, administrative forfeitures of vessels are much more cost effective. An administrative forfeiture can take as little as six seeks from seizure, to perfection of forfeiture, to sale. Custody costs are satisfied before any distributions of proceeds of sale. It is in all parties' interest to minimize these costs. Administrative forfeitures have been found to adequately balance the due process rights of owners and lienors with the need for an expedited procedure which minimizes costs and prevents unnecessary vessel deterioration, common with long periods of custody.

The longstanding interpretation by the Coast Guard (and its predecessor agencies in administering the documentation laws) that only a vessel judicially forfeited is "adjudged forfeited" hinders the use of the administrative forfeiture provisions of the Customs laws. An administrative forfeiture does not result in a court order, only a declaration of forfeiture by a Customs officer. If a vessel, at the time of forfeiture, does not qualify for the domestic trades, the only way to satisfy the Coast Guard requirement for granting domestic entitlements is to perfect the forfeiture in a judicial action. Customs is faced with proceeding judicially, which may take several years and significantly increase expenses and decrease the value of the vessel through deterioration, or proceeding administratively, which often results in obtaining less value for the vessel, due to limited trade eligibility.

Where administrative forfeitures have been used under the existing regulations additional problems exist. The purchasers of administratively forfeited vessels, often incorrectly presume the vessel will be eligible for the domestic trades. In the last year at least 10 such purchasers have requested that their purchases be voided upon being informed by Coast Guard documentation officials that the vessel did not gain domestic trade entitlements by virtue of the forfeiture.

Discussion of Proposed Regulation

In light of these problems, the Customs Service has requested that the Coast Guard reexamine its interpretation of the documentation laws and change its regulations to recognize administrative forfeitures. The Chief Counsel of the Coast Guard has determined that vessels administratively forfeited are considered "adjudged forfeited for a breach of the laws of the United States," and therefore may be issued licenses for the domestic trades. The proposed regulations would change the existing regulations to reflect the Chief Counsel's opinion. The federal government's ability to recoup the costs of forfeiture would thereby be facilitated and purchasers of vessels sold after administrative forfeiture would have maximum use of the vessels.

The Coast Guard is tasked with recording mortgages and notices of

claim of lien against the records of documented vessels. Although the regulations of Part 67 provide for the removal of these encumbrances by various means, the regulations have never provided for their removal based solely upon evidence of forfeiture, administrative or judicial. If there is a preferred mortgage of record, the purchaser is not permitted to redocument the vessel without recording a satisfaction of mortgage or obtaining mortgagee consent to surrender of the certificate of documentation. The net result is that the marketability of forfeited vessels, with liens and encumbrances of record, is diminished.

The Chief Counsel of the Coast Guard has also determined that a declaration of forfeiture, whether judicial or administrative, wipes a vessel free and clear of all prior liens and mortgages. Those claims attach to the proceeds of sale if the vessel is sold. If the vessel is otherwise disposed of, those claims may be paid out of the Customs Forfeiture Fund, with reimbursement, if appropriate, by the recipient agency. Therefore, a declaration of forfeiture constitutes sufficient authority to remove the encumbrances of record. The proposed regulations recognize this opinion of the Chief Counsel and would, upon presentation of evidence of forfeiture, whether judicial or administrative, provide for removal of all encumbrances of record. The forfeiture program and the federal government's ability to recoup the costs of the forfeiture program would thereby be facilitated.

Existing § 67.05–15(a) would be amended to reflect that in the case of a forfeited vessel the owner must provide evidence establishing chain of title from the point of judicial decree of forfeiture or from the Customs officer's affidavit of forfeiture under an administrative forfeiture action.

Existing § 67.19–5(a) would be amended to add to the definition of forfeited vessel one forfeited under an administrative forfeiture action.

Existing § 67.19–5(b) would be amended to add to the evidence sufficient to establish forfeiture, an affidavit from a Customs officer who has personal knowledge of the particulars of the vessel's forfeiture under an administrative forfeiture action.

Existing § 67.39–1(a) would be amended by adding that a chattel mortgage, notice of claim of lien, or a preferred mortgage outstanding on the record of a vessel may be removed from that record by either a court order or an affidavit described in § 67.39–3.

Existing § 67.39–3 would be amended by changing the title to include affidavits as well as court orders.

Proposed § 67.39–3(c) would provide for removal of the encumbrances described in § 67.39–1 upon presentation of a certified copy of an order from a federal district court declaring the vessel itself to be forfeit or the proceeds of its sale to be forfeit to the federal government of the United States for a breach of its laws.

Proposed § 67.39–3(d) would provide for removal of the encumbrances described in § 67.39–1 upon presentation of an affidavit from a Customs officer who has personal knowledge of the particulars of the vessel's forfeiture to the federal government of the United States under an administrative forfeiture action.

Existing Appendix A would be amended to add to title evidence requirements for captured or forfeited vessels, title evidence from point of court determination or customs officer's affidavit. The citizenship evidence required would also be amended to add citizenship evidence from point of court determination or customs officer's affidavit.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary.

The granting of domestic trade licenses to vessels administratively forfeited would not result in a greater number of vessels eligible to engage in the domestic trades. Every vessel which is eligible for administrative forfeiture is also eligible for judicial forfeiture. Under existing regulations, a judicial forfeiture gives rise to evidence which is sufficient for the Coast Guard to grant domestic trade licenses. By adding to the acceptable evidence of forfeiture, an affidavit from a Customs officer under the more streamlined administrative forfeiture actions, the government will incur less expense in custody costs and vessels would experience less deterioration. Under the proposed regulations, the government could more effectively recoup costs of the forfeiture program. The vessels available to the public would be more valuable, materially and in terms of domestic trade eligibility.

Recognizing forfeited vessels as being sold free and clear of liens also increases the marketability of the vessels since the purchaser is assured that the vessel is unencumbered.

These changes should benefit mortgagees and lien claimants. Upon forfeiture and sale, their interests attach to the proceeds of sale or to the Customs Forfeiture Fund. These changes should result in higher purchase prices and more money available to satisfy these claims.

Regulatory Flexibility Act

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

Paperwork Reduction

This proposed rulemaking merely adds alternative methods of complying with existing information collection requirements in §§ 67.05–15, 67.39–1 and 67.39–3. These information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 USC 3501 *et seq.*) and have been assigned approval number 2115–0110. No further approval is necessary as no additional burden is imposed by this proposal.

Environmental Assessment

This proposal is limited to actions by the Coast Guard in interpreting the term "adjudged forfeited" and recognition of the effect of forfeiture and sale. The proposal would not have any impact or effect on the environment. It does not require an Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement (Section 2–B–3–g, COMDTINST. M16475.1A).

List of Subjects in 46 CFR Part 67

Documentation of vessels.

PART 67—DOCUMENTATION OF VESSELS

In consideration of the foregoing, the Coast Guard proposes to amend Part 67 of Title 46, Code of Federal Regulations as follows:

1. The authority citation for Part 67 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 12121; 46 App. U.S.C. 983; 49 CFR 1.46(b).

2. Section 67.05–15 is amended by revising paragraph (a) to read as follows:

§ 67.05–15 Extent of title evidence required for captured, forfeited, special legislation, and wrecked vessels.

(a) In the case of a captured or forfeited vessel, the owner must provide evidence establishing chain of title from the judicial decree of capture, the judicial decree of forfeiture, or the Customs officer's affidavit, described in § 67.19–5(c), that the vessel was forfeited under an administrative forfeiture action, and citizenship evidence for all owners in that chain.

* * * * *

3. Section 67.19–5 is amended by redesignating the existing paragraph (a)(2) and note as (a)(3), adding a new paragraph (a)(2), and revising paragraph (b) to read as follows:

§ 67.19–5 Forfeited vessels.

(a) * * *

(2) One which has been forfeited to the federal government of the United States for a breach of its laws under an administrative forfeiture action; or

(3) One which has been seized by the federal government of the United States for a breach of its laws and which has been sold at an interlocutory sale, the proceeds of which have been adjudged forfeited to the federal government of the United States by a federal district court.

* * * * *

(b) The applicant must submit either a certified copy of the court order declaring the vessel itself to be forfeit or the proceeds of its sale to be forfeit to the federal government of the United States, or an affidavit from a Customs officer with personal knowledge of the particulars of the vessel's forfeiture to the federal government of the United States under an administrative forfeiture action.

* * * * *

4. Section 67.39–1 is amended by revising paragraph (a) to read as follows:

§ 67.39–1 General requirements.

* * * * *

(a) A court order or affidavit described in § 67.39–3; or

* * * * *

5. Section 67.39–3 is revised to read as follows:

§ 67.39–3 Requirements for removal of encumbrances by court order or affidavit.

The encumbrances described in § 67.39–1 are removed from the record upon presentation of:

(a) A certified copy of an order from a court of competent jurisdiction declaring title to the vessel to be free and clear, or declaring the encumbrance to be of no effect, or ordering the removal of the encumbrance from the record;

(b) A certified copy of an order from a federal district court in an *in rem* action requiring the free and clear sale of a vessel at a marshal's sale accompanied by a certified copy of the order confirming such sale, where issued under local judicial procedures;

(c) A certified copy of an order from a federal district court declaring the vessel itself to be forfeit, or the proceeds of its sale to be forfeit to the federal government of the United States for a breach of its laws; or

(d) An affidavit from a Customs officer with personal knowledge of the particulars of the vessel's forfeiture to the federal government of the United States for a breach of its laws under an administrative forfeiture action.

6. The first "Vessel Type" entry in Appendix A is amended by revising the "Initial" entries for items 4 and 5 under the "Requirements" column, and by revising the "Subsequent" entry for item 3 under the "Requirements" column to read as follows:

APPENDIX A—REQUIREMENTS FOR SPECIALLY QUALIFIED VESSELS UNDER 46 CFR SUBPART 67.19

Vessel type	Initial or subsequent application for documentation	Requirements	Refer to section
Captured (§ 67.19–3); or forfeited (§ 67.19–5)	Initial	* * *	
		4. Title evidence from point of court determination or Customs affidavit.	67.05–15(a), Subpart 67.07.
		5. Citizenship evidence from point or court determination or Customs affidavit.	67.05–15(a).
*	* * *	* * *	
	Subsequent	* * *	
		3. Title evidence from point of court determination or Customs affidavit.	67.05–15(a), Subpart 67.07.
*	* * *	* * *	

Dated: June 9, 1986.

J.W. Kime,

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

[FR Doc. 86–13281 Filed 6–12–86; 8:45 a.m.]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–10; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: On September 3, 1985, NHTSA proposed deleting paragraph S4.1.1.20 of Motor Vehicle Safety Standard No. 108, (49 CFR § 71.108) which specifies use of an accurate rated bulb in testing for compliance with the standard. On the basis of comments to the docket, which indicated that implementation of the proposal would incease the cost of testing without any corresponding safety benefit, the agency is terminating rulemaking on this subject.

FOR FURTHER INFORMATION CONTACT: Ken Rutland, Office of Rulemaking, NHTSA, 400 Seventh St. SW, Washington, DC 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: Implementing the grant of a petition for rulemaking submitted by a manufacturer of motor vehicle lighting equipment, Dry Launch of Livermore, California, NHTSA proposed deleting paragraph S4.1.1.20 from Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* (September 3, 1985, 50 FR 35583). This paragraph specifies in pertinent part that a lamp not having a sealed-in bulb shall meet Standard No. 108 "when tested with a bulb whose filament is positioned within +/−0.010 inch of the nominal design position specified in SAE Standard J573d, *Lamps, Bulbs and Sealed Units*, December 1968, or specified by the bulb manufacturer."

Dry Launch petitioned for its deletion because of difficulties in obtaining a test bulb of the specified tolerance, and because of the inconsistency represented in testing a lamp with one tolerance and marketing it with a bulb

that will have a different one. NHTSA tentatively agreed with Dry Launch in proposing deletion of S4.1.1.20.

The largest number of comments received on the proposal came from lamp and bulb manufacturers, followed by vehicle manufacturers. Comments were also submitted from two trade associations, one lamp testing laboratory, and the California Highway Patrol. All lamp and bulb manufacturers and all but one of the vehicle manufacturers opposed the proposal (only Fiat was in favor of it). In the opinion of the commenters, the burden of testing would be increased, rather than decreased. Cost of bulb procurement would rise since manufacturers would have to insure compliance within a cube formed by the up/down, left/right boundary created by the tolerance that would result upon deletion of the one contained in S4.1.1.20. Finding bulbs to meet these out-of-focus positions and testing in all these positions would increase testing costs without any resultant safety benefits. The ETL Testing Laboratories, Inc. (ETL) performs compliance tests for many manufacturers of lighting devices. ETL stated that the proposal would create a significantly higher testing cost by requiring testing of each device in the eight extreme tolerance positions, i.e., the purchase and testing of eight highly accurate filament-positioned bulbs instead of one. Ford commented that, as a minimum, all lamp designs would have to be checked to make sure that compliance could be assured.

Hella suggested strengthening the current situation by specifying that "designed to conform" could be verified by measurements with accurate rated bulbs according to SAE design specifications and that "conformity of performance" could be verified according to SAE service performance requirements.

The California Highway Patrol (CHP) fully supported the intent of the proposal, but felt that the present proposal of quadrupling the filament tolerance in order to reduce the cost of laboratory standard bulbs may not actually accomplish that purpose. The CHP suggested an alternative—requiring bulbs to be produced to a service performance standard and requiring that lamps be required to pass an appropriate minimum level of in-service light output with whatever bulb is in it at the time of sale.

The agency has concluded that one of the issues raised by the Dry Launch petition, i.e., that representative in-service bulbs have a very wide range of filament positions, has some merit. However, the proposal to delete S4.1.1.20 is not an appropriate solution since it would impose a new, more costly testing burden for the lamp manufacturers, without a corresponding increase in safety benefits. Therefore, the agency is terminating rulemaking under this proposal. It will, however, continue to study the situation to determine if another approach is feasible.

The engineer and lawyer primarily responsible for this notice are Ken Rutland and Taylor Vinson respectively.

Authority: 15 U.S.C. 1392, 1407, delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 6, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-13337 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 51, No. 114
Friday, June 13, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Regulatory Budget; Committee Meeting

AGENCY: Committee on Regulation; ACUS.

ACTION: Committee meeting.

SUMMARY: The Administrative Conference Committee on Regulation will meet with its consultant. Professor Thomas D. Morgan, to discuss the consultant's research on the topic of a "regulatory budget". This research project is a study of the concept of a process in which either Congress or an agency of the Executive Branch annually establishes maximums (or "budgeted amounts") of imposed costs that the activities under particular regulatory programs may impose on the economy.

DATE: June 19, 1986, 10:00 a.m.

ADDRESS: 1700 G Street NW., Washington, DC, Sixth Floor Board Room.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 212 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7020.

Dated: June 9, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–13434 Filed 6–12–86; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Cooperative Agreements; Texas A&M University

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to enter into a cooperative agreement.

Activity: The Office of International Cooperation and Development intends to enter into a cooperative agreement with Texas A&M University for collaborative activities in the transfer of soil and water management technologies to increase agricultural productivity under dryland or rainfed conditions and improve the quality of life of small subsistence farmers in arid and semi-arid regions.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds in FY 1986 for a cooperative agreement with Texas A&M University, College Station, Texas to transfer soil and water management technologies developed in Africa by the TROPSOILS research program, Texas A&M University and ICRISAT (International Crops Center, Niger). These technologies will be transferred to the countries of Senegal, Mali, Burkina Faso, Togo and Cameroon through the ACPO's (Acclerated Crop Production Officers) or national scientists in each country. Texas A&M scientists will: (a) Establish regional demonstration trails; (b) monitor progress of these trials; (c) monitor results of each regional technology transfer program; and (d) conduct a research planning and training workshop in the region.

The Texas A&M faculty has both the professional experience through the TROPSOILS research program and a close working relationship with colleagues in the collaborating countries that are needed for this transfer activity. This agreement will enhance the University's international collaborative activities. Appropriate research from the TROPSOILS and ICRISAT programs will be gleaned by University faculty and transferred to other countries. This in turn will broaden the international experience and capabilities of scientists in the University's Department of Soil and Crop Sciences.

OICD will provide only project assistance to Texas A&M. Therefore, this is not a formal request for applications. Approximately $100,000 will be available in FY 1986. The proposed agreement will be funded for 12 months. These funding estimates and time period may vary and are subject to change.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319–6–026).

Dated: June 10, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86–13346 Filed 6–12–86; 8:45 am]

BILLING CODE 3410–DP–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Apparel Products Produced or Manufactured in Mexico

June 10, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated February 4, 1986 (51FR 4781) established limits for certain categories of cotton, wool, and man-made fiber textile products, including Categories 641 and 338/339, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1986 and extends through June 30, 1986. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 26, 1979, as further amended

and extended, between the Governments of the United States and Mexico, and at the request of the Government of Mexico, the six-month limit for Category 641 is being increased from 235,875 dozen to 250,750 dozen by the application of swing. The limit for Category 338/339, is being reduced from 292,747 dozen to 262,790 dozen to account for the swing applied to Category 641.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 10, 1986.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of February 4, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported during the six month period beginning January 1, 1986.[1]

Effective on June 10, 1986, paragraph 1 of the directive of February 4, 1986 is hereby amended to include adjusted restraint limits for the following categories:

Category	Adjusted 6-mo restraint limit [1]
641	250,750 dozen.
338/339	262,790 dozen.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13380 Filed 6-12-86; 8:45 am]

BILLING CODE 3510-DR-M

Amending Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

June 10, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 16, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

In consultations held in Kuala Lumpur May 2-3, 1986, the Governments of the United States and Malaysia agreed to amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985 to, among other things, combine the import restraint limits for cotton and man-made fiber playsuits in Categories 337 and 637 and cotton fabrics in Categories 310 through 320, as a group, with sublimits for Categories 310/318, 311, 312, 313, 314, 315, 316, 317, 319, and 320. In addition, new limits were established for the foregoing categories starting with the period which began on May 1, 1986 and extends through December 31, 1986, and also including each of the remaining years of the agreement which terminates on December 31, 1989. For purposes of this agreement it was further agreed that the factor for converting Category 337/637 from dozens to equivalent square yards will be 23 and for Category 638/639, 15.5. In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to make the agreed changes for goods, produced or manufactured in Malaysia and exported during the agreement period which began on May 1, 1986 and extends through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 10, 1986.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the limits established in the directives of December 23, 1985, and April 28, 1986 for cotton textile products in Categories 313 and 337, produced or manufactured in Malaysia.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 16, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories produced or manufactured in Malaysia and exported during the agreement period beginning on May 1, 1986 and extending through December 31, 1986, in excess of the indicate restraint limits:

Category	Eight-month restraint limit [1]
310-320	30,000,000 square yards.
310/318	1,333,333 square yards.
311	12,000,000 square yards.
312	12,000,000 square yards.
313	12,000,000 square yards.
314	12,000,000 square yards.
315	12,000,000 square yards.
316	12,000,000 square yards.
317 pt. [2]	1,333,333 square yards.
317 pt. [3]	1,333,333 square yards.
319	12,000,000 square yards.
320	12,000,000 square yards.
337/637	126,667 dozen.

[1] The limits have not been adjusted to reflect any imports exported after April 30, 1986.

[2] In Category 317, only TESUSA items 320—through 331—with statistical suffixes 50, 67 and 93.

[3] In Category 317, all TSUSA numbers in the category except those listed in footnote 2.

Textile products in the foregoing categories which have been exported to the United States prior to May 1, 1986 shall not be subject to this directive.

Textile products in the foregoing categories, except Categories 313 and 337, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1484(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent sqare yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits, except that there will be no carryover in the first agreement period (May 1, 1986 through December 31, 1986) and no carryforward in the final agreement period (calendar year 1989); and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. members was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13381 Filed 6-12-86; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 85-4-84CD]

Notice Commencing 1984 Cable Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice Commencing 1984 Cable Distribution Proceeding; Notice of Partial Distribution of 1984 Cable Royalty Fund.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, D.C. 20036, (202) 653-5175.

SUMMARY: The Copyright Royalty Tribunal announces that a controversy exists regarding the distribution of the royalties paid by cable operators in some Phase II categories for the calendar year 1984. The Tribunal also announces it will make a partial distribution of the cable royalty fund for 1984.

EFFECTIVE DATE: The 1984 cable distribution controversy is declared effective June 19, 1986. The partial distribution of the 1984 cable royalty fund shall take place on June 19, 1986.

SUPPLEMENTARY INFORMATION: Based upon the responses to the Tribunal's notice, 51 FR 18646 (May 21, 1986), asking the claimants to the 1984 cable copyright royalty fund whether a controversy existed as to the distribution of the fund, the Tribunal has determined that: There is no controversy as to the distribution of 100% of the 1984 Basic and 3.75 Funds; that whether there is or is not a controversy regarding the 1984 Syndex fund should await the outcome of the appeals of the 1983 cable distribution determination; and that there exists controversies in one or more Phase II program categories.

Each of the settling Phase I parties has agreed to accept the same Phase I shares of the 1984 Basic and 3.75% funds (and for National Public Radio, 0.18% of the entire 1984 fund) as allocated in the Tribunal's final determination in the 1983 cable distribution proceeding, 51 FR 12792 (April 15, 1986). Further, in the Program Suppliers category, the Phase II parties have agreed on a distribution of their Basic and 3.75% shares based on their 1983 allocation, and that, in the event that any Program Suppliers Phase II claimant should have received an overpayment, each party agrees to reimburse the Tribunal. The Tribunal interprets this to mean reimbursement with interest amounting to that interest which the royalties would have earned if they had stayed in the fund. In addition, in the Music category, although there has been no previous findings of entitlement for one of the Phase II parties, the claimants for ASCAP, BMI and SESAC point out, and the Tribunal agrees, that retention of the Music portion of the Syndex fund (4.5%) is sufficient to resolve any controversies that may exist in that category.

Consequently, the Tribunal has determined that the 1984 cable distribution controversy in Phase II exists, and is declared effective June 19, 1986. Further, the Tribunal shall make partial distribution of the 1984 cable royalty fund on June 19, 1986 according to the terms outlined in the settlement agreement filed with the Tribunal on June 2, 1986, a copy of which may be examined at the Tribunal's offices.

The first part of the schedule of the Phase II proceeding shall be as follows:

July 7, 1986—All parties who claim that a controversy exists in their Phase II category shall file their written direct cases.

July 14–24, 1986—Parties seek to resolve among themselves requests for underlying documentation and objections to direct evidence.

July 28, 1986—Parties submit in writing to CRT and serve upon all parties any objections to direct evidence, including any objections based upon failure to provide underlying documentation.

July 30, 1986—Parties file oppositions to evidentiary objections.

August 4, 1986—CRT issues rulings on all objections raised July 28, 1986.

In response to a request by the settling parties to facilitate the settlement agreement, we have included the following paragraph in our Notice:

> In order to facilitate the settlement of the Phase I parties, we are modifying our Advisory Opinion of May 16, 1986, to provide that, for purposes of the 1984 Proceeding, programs syndicated to any broadcast by only one U.S. commercial television station during 1984, which were not produced by or for that station, will be treated as part of the "syndicated program" allocation, not the "local program" allocation.

Dated: June 10, 1986.

Mario F. Aguero,

Acting Chairman.

[FR Doc. 86-13352 Filed 6-12-86; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Electronic Combat; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Electronic Combat will meet in closed session on July 8, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as

they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine current electronic warfare technical issues, vulnerabilities of U.S. systems, and the means of countering the effects of these technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Linda M Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 9, 1986.

[FR Doc. 86-13369 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Multi-National FOFA; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: Defense Science Board Task Force on Multi-National FOFA will meet in closed session on 8-9 July 1986 in the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO with a view towards future U.S. and NATO requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 9, 1986.

[FR Doc. 86-13371 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on 30 June 1986 in the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 9, 1986.

[FR Doc. 86-13370 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Pacific Command Air Defense; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: Defense Science Board Task Force on Pacific Command Air Defense will meet in closed session on July 8 and September 10, 1986 in the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 9, 1986.

[FR Doc. 86-13372 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on July 8-9-10, 1986.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on July 8-9-10, 1986 the committee will discuss status of SDI research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C., App. II, (1982)), it has been determined that this (SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 9, 1986.

[FR Doc. 86-13368 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Procedures for Ordering Fiscal Year 1987 Updates to the 1984 Looseleaf Edition of the Federal Acquisition Regulation (FAR)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of procedures to order FY 1987 updates to the looseleaf edition of the FAR.

SUMMARY: This notice is to advise Federal agencies/departments to submit their FY 1987 copy requirements for the looseleaf edition of the FAR to the Government Printing Office (GPO). Agencies failing to submit orders will not receive FAR updates distributed in FY 1987. Information applicable to private sector subscriptions from the Superintendent of Documents is outlined in paragraph six of this notice.

DATE: The looseleaf edition of the FAR is distributed to agencies by GPO based on agency-established copy requirements. Copy requirements are submitted to GPO annually. Agencies must submit their FY 1987 FAR copy requirements to GPO by June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION: (1) The Federal Acquisition Regulation (FAR) effective on April 1, 1984, is contained in Chapter 1 of Title 48 of the Code of Federal Regulations. It is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds.

(2) The basic 1984 looseleaf edition of the FAR was distributed to agencies by the GPO based on agency-established copy requirements for FY 1985. Updates to the basic edition were distributed in FY 1986, also based on agency-established copy requirements for that year. GPO requires agencies to submit their FY 1987 FAR copy requirements by June 20, 1986. Agencies not submitting copy requirements for 1987 will no longer receive FAR updates after September 30, 1986.

(3) Agency GPO Liaison Officers responsible for managing FAR distribution are reminded to consolidate their agency's FY 1987 FAR copy requirements and to make those requirements known to GPO by submitting a Standard Form 1, using a FY 1987 requisition number, through their Washington, DC Headquarters office printing and publication official. By Circular Number 266, dated April 30, 1986, GPO advised Federal Printing and Publications Officials to submit their agencies' FY 1987 copy requirements for all open requisitions (including the FAR) by June 20, 1986.

(4) FAR materials issued in FY 1987 will consist of updates to the basic looseleaf edition only. The basic 1984 looseleaf edition of the FAR and updates distributed prior to October 1, 1986, will not be reprinted for distribution prior to FY 1987. Federal employees unable to obtain the basic looseleaf edition and updates distributed in FY 1985 and 1986 through their agency GPO Liaison Officer may subscribe to the FAR directly with GPO by following the procedures in paragraph six of this notice.

(5) FAR updates in FY 1987 will continue to be issued under Federal Acquisition Circulars (FAC's) and will continue to contain "Federal Acquisition Circular 84–XX" as part of the title to indicate that the attached pages should be filed in the basic 1984 looseleaf edition of the FAR text. All FY 1987 production costs will be prorated to participating agencies by GPO.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the basic 1984 looseleaf edition of the FAR and all updates may place subscription orders with GPO by writing or calling, Superintendent of Documents, Government Printing Office, Washington, DC 20405, telephone (202) 783–3238. The price for each subscription order is presently $90.00 domestic and $112.50 foreign. (GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.) Individuals already having a FAR subscription with GPO will continue to receive FAR updates until notified by the Superintendent of Documents and are not required to reorder at this time.

Dated: June 9, 1986.

Lawrence J. Rizzi

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 86–13309 Filed 6–12–86; 8:45 am]

BILLING CODE 6820–61–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 5, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Air Force Science and Technology Programs for Reliability, Maintainability and Logistics will conduct a closed meeting at Luke AFB, Arizona, on July 15–16, 1986, from 8:30 am to 5:00 pm.

The purpose of the meeting will be to review Air Force Reliability, Maintainability and Logistics technology programs and evaluate their completeness and innovativeness to achieve Air Force goals.

The meeting concerns 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 202–697–8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86–13435 Filed 6–12–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

June 4, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee to Review Options/Technology for Reliable Identification of Airborne Targets Beyond Visual Range in Combat will conduct a closed meeting at The Pentagon, Room 5D–982 on 10–11 July 1986, from 8:00 am to 5:00 pm.

The purpose of the meeting will be to examine possible solutions to the problem of positive target identification beyond visual range.

The meeting concerns 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 202–697–8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86–13436 Filed 6–12–86; 8:45 am]

BILLING CODE 3910–01–M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of membership of the Defense Logistics Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRB) of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: Upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–6049 or 274–6035.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 5314(c)(4), the following are names and titles of the

executives who have been appointed to serve as members of the Performance Review Boards. They will serve a one-year renewable term, effective upon publication of this notice.

Initial PRB—Mr. Raymond W. Dellas, Chairman, Staff Director, Office of Small & Disadvantaged Business Utilization
Mr. Peter H. Tovar, Chief, Accounting & Financing Division, Office of the Comptroller
RADM James E. Eckelberger, SC, USN, Executive Director, Directorate of Contracting
2nd Level Review—Mr. Raymond F. Chiesa, Executive Director, Directorate of Contracting
Mr. Anthony W. Hudson, Staff Director, Office of Civilian Personnel
Mr. William V. Gordon, Executive Director, Directorate of Contract Management

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 86-13320 Filed 6-12-86; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Under Ice Warfare Requirements will meet on July 1 and 2, 1986 at the Naval Research Laboratory, Washington, DC. The meeting will commence at 8:00 A.M. and terminate at 5:00 P.M. on July 1 and 2, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to understand, deal with, and exploit environmental surveillance issues in polar waters, identify what study has been done on the subject thus far, identify promising technologies, and drive operational requirements to deal with under ice anti-submarine warfare. The agenda will include technical briefings on the threat, maritime strategy and environmental considerations, current and projected technologies, and an Executive Session to begin formulating a draft report. These briefings will contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code 00NR), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 6906-4870.

Dated: June 10, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-13397 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Soviet Submarine Threat will meet on July 2, 1986, at the Pentagon, Room 5B725, Washington, DC. The meeting will commence at 8:30 A.M. and terminate at 4:00 P.M. on July 2, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to assess the potential of U.S. defensive systems now in the pipeline to meet the Soviet submarine threat, as well as from an overall system approach, determine the major elements required to match the threat and recommend modifications, if required, to current Navy programs in order to maintain technological superiority. The agenda will include technical briefings addressing the Soviet submarine threat. These briefings will contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: June 9, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-13398 Filed 6-12-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between September 15, 1985, and May 5, 1986. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Regulations governing Board jurisdiction and procedures were published in the

Federal Register on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Appeal of the State of Massachusetts, Docket No.: 6(206)86, ACN: 01–30017

The State appealed a final letter of determination (FLD) issued by the Assistant Secretary for Special Education and Rehabilitative Services. The Secretary has designated the Education Appeal Board as the forum for this appeal. The FLD disallowed fiscal year 1985 expenditures received by the State under Part B of the Education of the Handicapped Act. (EHA–B).

The Assistant Secretary claims that the FY 1985 EHA–B expenditures were inappropriately based upon a child count which exceeded 12 percent of the Massachusetts population between age five and seventeen.

The Department seeks a refund of $76,256. Massachusetts disputes all liability.

Appeal of the District of Columbia Public Schools, Docket No.: 29(204)86, ACN: 03–30003

The District of Columbia (DC) appealed a final letter of determination issued by the Acting Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed grant awards for fiscal years 1978, 1979, and 1980.

The Acting Assistant Secretary disallowed costs because DC could not adequately verify the accuracy of specific expenditures. Costs were also disallowed because the local matching requirement was not met.

The Department seeks a refund of $2,729,924. DC concedes $42,771, leaving $2,687,153 at issue.

Appeal of California State University, Docket No.: 23(198)85, ACN: 09–30030

The University appealed a final letter of determination issued by the Division of Grants and Contracts Service (GCS). The underlying audit reviewed the administration of the University's Los Angeles Evaluation, Dissemination and Assessment Center for the period between October 1, 1981 and February 28, 1983.

GCS disallowed expenditures because the University failed to use program income for allowable costs of the project.

The Department seeks a refund of $58,338. The University disputes all liability.

Appeal of Missoula County, Montana, Docket No.: 30(205)86, ACN: 04–42111

The County appealed a final letter of determination issued by the Division of Grants and Contracts Service (GCS). The underlying audit, performed by Dobbins, De Guire, and Tucker, P.C., reviewed the Teachers Center Project for the year ending June 30, 1982.

GCS disallowed expenditures because the County failed to follow the program guidance relative to the report and disposition of program income in violation of governing regulations.

The Department seeks a refund of $20,000. The County disputes all liability.

Appeal of Connecticut State Library, Docket No.: 27(202)86, ACN: 01–30038

The Connecticut State Library (Library) appealed a final letter of determination (FLD) issued by the Acting Director/Senior Program Coordinator for Library Programs. The underlying audit reviewed the Library's administration of the Library Services and Construction Act (LSCA) program for fiscal years 1981, 1982, and 1983.

The Acting Director disallowed costs because of the Library's lack of documentation to support its contention that eligible target groups benefited from services provided by "adequate" libraries.

The Department seeks a refund of $41,303. The Library disputes all liability.

Appeal of Atlanta Junior College, Docket No.: 24(199)85, ACN: 04–30022

Atlanta Junior College (College) appealed a final letter of determination (FLD) issued by the Division of Grants and Contracts Service (GCS). The underlying audit reviewed the College's administration of its Special Services Program and Upward Bound grants awarded pursuant to Title IV–A–4 of the Higher Education Act of 1965 (as amended). The audit review period was from September 1, 1978 through December 31, 1981.

GCS disallowed certain costs attributable to the College's Special Services Program (counseling and tutoring). Counseling costs were disallowed because of a failure to adhere to the approved plan of operation, while tutoring costs were not properly documented as to student eligibility.

The Department seeks a refund of $53,522. The College disputes all liability.

Appeal of Arkansas Baptist College, Docket No.: 19(194)85, ACN: 06–40104

The College appealed a final letter of determination issued by the Division of Grants and Contracts Service (GCS). The underlying audit reviewed expenditures attributable to Title III Higher Education grants for the period between October 1, 1981 and September 30, 1983.

GCS disallowed expenses for salary and fringe benefits, excessive salary increases, loans of Title III funds to the general fund and undocumented expenditures.

The Department requests a refund of $76,447. The College disputes all liability.

Appeal of Santa Rosa Consolidated School District #8, Docket No.: 28(203)86, ACN: 06–50300

The District appealed a final letter of determination issued by the Division of Grants and Contracts Service (GCS). The underlying audit reviewed grant awards for Title II-Bilingual Education programs conducted between October 1, 1982 and September 30, 1984.

GCS partially disallowed expenditures for training seminars, salary and fringe benefits, and stipends. Costs were also disallowed because they were not reasonable when compared to similar services available.

The Department seeks a refund of $7,569. The District disputes all liability.

Appeal of Fort Valley State College, Docket No.: 21(196)85, ACN: 04–30059

Fort Valley State College (College) appealed a final letter of determination issued by the Division of Grants and Contracts Service (GCS). The underlying audit reviewed programs conducted under Title III-Aid to Developing Institutions Program (ADIP) and Title IV-Student Financial Aid between July 1, 1980 and September 30, 1982. This Board lacks jurisdiction to adjudicate student financial assistance programs authorized by Title IV, and governed by regulations promulgated under section 487, of the Higher Education Act of 1965, as amended (34 CFR 78.3).

GCS disallowed expenditures for travel costs, overclaimed unliquidated obligations, salary/fringe benefits, the allocation of funds associated with "Project Equal", and Federal funds claimed in excess of the ratios for Federal and College participation.

The Department seeks a refund of $513,539.78 (Note that $5,175 is attributable to Title IV-Student Financial Aid and is, therefore, outside of the jurisdiction of the Education Appeal Board). The College disputes $496,875.78 of the requested refund.

Appeal of Oregon Vocational Rehabilitation Division, Docket No.: 26(201)86, ACN: 10–40102

The Oregon Vocational Rehabilitation Division (OVRD) appealed a letter of disapproval of a written request to incur an expenditure during the terms of its grant. The letter, issued by the Rehabilitation Services Administration Regional Commissioner, denied OVRD authority to incur an expenditure for primary subsistence maintenance for individuals deemed VR eligible. Maintenance, as a vocational rehabilitation service, is intended to supplement a State or locally funded maintenance program. The Commissioner concluded that OVRD's proposal violated the "similar benefits" provision of 34 CFR 361.47(b)(2). OVRD disputes the interpretation of the Commissioner and seeks authority to incur an expenditure.

Appeal of California, Docket No.: 20(195)85, ACN: 09-41531

The State appealed a final letter of determination (FLD) issued jointly by the Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Vocational and Adult Education.

The FLD was based upon a Single System Audit of the State of California for the fiscal year ending June 30, 1983.

Costs associated with Title I and vocational education were disallowed because they were improperly charged to Federal grants after expiration of the statutory period of availability.

The Department seeks a refund of $734,210. The States disputes liability and questions the validity of the FLD.

Intervention

Regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: June 10, 1986.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 86-13413 Filed 6-12-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Liquefied Gaseous Fuels Spill Test Facility Program

In accordance with the Congressional action on the Continuing Resolution (Pub. L. 97-377), the Department of Energy (DOE), in support of the Fossil Energy Liquefied Gaseous Fuels Spill Test Facility Program, is setting forth this notice that it has completed construction activities related to the Spill Test Facility. The facility, which is located at the Department's Nevada Test Site, Mercury, Nevada, is currently undergoing extensive readiness confirmation trials and will be available for user-sponsored spill testing during the summer of 1986. It is capable of the rapid release of large-quantities of cryogenic, flammable, or toxic materials, and was built in concert with and in response to the needs of many industrial and government organizations. To that end, the facility has been designed to reproduce the size and rate of accidental releases as closely as possible with the actual materials of concern.

It can (1) discharge, at a controlled rate, a known amount of hazardous test fluid; (2) monitor and record process operating data, meteorological data, downwind gas concentration data, and other data as is required for the experiment; and, (3) provide a means to control and monitor these functions from a remote location.

In conjunction with this notice, the DOE is providing a listing of the organizations and those tests which are scheduled to take place during the 1986 test season. To wit:

(1) *LNG Vapor Barrier Verification Field Trials*—Sponsors: The Gas Research Institute and the Department of Transportation.

The goal of this project is the evaluation of the effectiveness of vapor fences as a mitigation technique for accidental releases of Liquefied Natural Gas (LNG) at peak-shaving plants. The objective of the test series to be undertaken is to provide a data base for the validation of past and future wind tunnel simulations of vapor fence effects on heavy gas dispersion. Once validated, the wind tunnel models will be used to determine the vapor fence performance for a number of different accident scenarios.

(2) *Amoco Hydrogen Fluoride Vapor Dispersion Tests*—Sponsor: Amoco Oil Company.

The goal of this project is to obtain scientific data which can be used to describe the behavior of hydrogen fluoride (HF) when it is released into the atmosphere under conditions which might simulate a major release from a process unit under worst-case meteorological conditions. Specifically, the experiments are designed to develop information on the amount of HF released into the atmosphere as a vapor of an entrained aerosol when liquid is spilled, and the dispersion of the HF as it travels downwind. It is necessary to set the release rate and the duration of the spill so that steady state atmospheric conditions are established. It is planned to make measurements of HF in ambient air in the dense gas regions, the transition region, and the trace gas region. The data will be used to assess the appropriateness of current air quality models for making projections of HF concentrations for emergency response applications.

This notification also requests that interested organizations provide written expression of their interest in receiving further notification regarding future tests, as well as identify an individual who can coordinate future test notification procedures for that agency/organization. Interested agencies/organizations will be notified of scheduled test plans on at least an annual basis.

FOR FURTHER INFORMATION CONTACT: Mr. J.E. Walsh, Jr., Deputy Assistant Secretary for Management, Planning and Technical Coordination, Office of Fossil Energy, Mail Station FE-10, U.S. Department of Energy, Washington, DC 20545.

Issued in Washington, DC, on June 9, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-13383 Filed 6-12-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-12-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 6, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 3, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fourth Substitute Original Sheet No. 205, proposed to be effective December 31, 1985
Third Revised First Revised Sheet No. 205, proposed to be effective January 1, 1986
Second Revised Substitute Second Revised Sheet No. 205, proposed to be effective February 1, 1986
Second Revised Fourth Revised Sheet No. 205, proposed to be effective April 1, 1986

Algonquin Gas states that such tariff sheets are being filed pursuant to the provisions of section 7 of its Rate Schedule F–4 to relect in its rates, effective December 31, 1985 and in its rates filed and made effective subsequent to December 31, 1985, an increase in the Contract Adjustment Demand Rate to be charged by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's May 22, 1986 filing.

Algonquin Gas requests that the Commission accept the above tariff sheets to be effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 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 June 16, 1986. 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. 86–13353 Filed 6–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–13–20–000 & 001]

Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff

June 6, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 3, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fourteenth Revised Sheet No. 201
Fifth Revised Sheet No. 205
Eighth Revised Sheet No. 241

Algonquin Gas states that such tariff sheets are being filed to reflect concurretly in its rates lower purchased gas cost to be charged by its spipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), resulting from its latest exercise of "market-out" provisons in certain of its gas purchase contracts, as set forth in Texas Eastern's May 22, 1986 filing, proposed to be effective June 1, 1986. The impact of such filing on Algonquin Gas' rates is a decrease of 20.83¢ in the commodity component of its sales rates.

Algonquin Gas proposes the effective date of the above tariff sheets to be June 1, 1986, to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 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 June 16, 1986. 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. 86–13354 Filed 6–12–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–120–000]

Gas Gathering Corp.; Compliance Filing and Request for Waiver of Filing Fee

June 6, 1986.

Take notice that on June 3, 1986, Gas Gathering Corporation (GGC) submitted for filing the following tariff sheets:

First Revised Volume No. 1

First Revised Sheet No. 1
First Revised Sheet Nos. 4–28
Original Sheet Nos. 29–41, 80

First Revised Volume No. 2

First Revised Sheet No. 1
First Revised Sheet Nos. 14–24

The proposed effective date of the tariff sheets is June 29, 1986.

GGC states that the proferred changes to its tariff are occasioned by the following: First, as a result of the Commission's Order authorizing GGC's abandonment of its only jurisdictional sale to Transcontinental Gas Pipe Line Corporation (Transco),[1] the filing cancels GGC's Rate Schedule X–2 and other tariff provisions governing GGC's prior sale of gas to Transco, the Purchased Gas Cost Adjustment clause and certain other provisions relating to sales of gas by GGC.

Second, GGC is filing transportation contracts with Transco and Energy Corporation of America, Inc. as Rate Schedules X–3 and X–4 respectively. Those transportation transactions were previously certificated by the Commission.

Third, as a result of the requirements under the Commission's Order No. 436, *et seq.* GGC's filing makes changes to its Rate Schedule T–1, adds a new interruptible open-access Rate Schedule IT–1, proposes a minimum transportation rate under Rate Schedules T–1 and I–1, a maximum rate under Rate Schedule I–1, and makes certain changes and additions to the General Terms and Conditions of its FERC Gas Tariff.

Contemporaneously with the above-referenced tariff sheets, GGC filed a petition for waiver of filing fee and supporting data pursuant to section 381.106(a) of the Commission's regulations. GGC states that because of severe economic distress it cannot pay the required fee for the filing of such tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission' Rules of Practice and Procedure. All such motions or protests should be filed on or before June 16, 1986. (18 CFR 385.214, 385.211). 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. 86–13386 Filed 6–12–86; 8:45 am]

BILLING CODE 6717–01–M

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[1] Gas Gathering Corporation, 33 FERC ¶ 62,327 (1985).

[Docket Nos. ID-2227-000, et al.]

Interlocking Directorate Applications; John M. Endries, et al.

Take notice that the following filings have been made made with the Commission:

1. John M. Endries

[Docket No. ID-2227-000]

June 5, 1986.

Take notice that on May 19, 1986 John M. Endries tendered for filing an application for authority to hold certain interlocking positions:

Position, Name of Corporation, and Classificaiton

Senior Vice President, Niagara Mohawk Power Corporation, and Public Utility
Director, Hydra-Co. Enterprises, Inc., and Other Corporation (Subsidiary)

Comment date: June 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Paul M. Smart

[Docket No. ID-2229-000]

June 4, 1986.

Take notice that on May 23, 1986 Paul M. Smart tendered for filing an application for authority to hold the following positions:

Position, Name of Corporation, and Classification

President and Chief Operation Officer; Director, The Toledo Edison Company, and Public Utility
Director, Ohio Valley Electric Corporation

Comment date: June 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13360 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-4-000, 001]

Granite State Gas Transmission, Inc.; Notice of Proposed Change in Rates

June 6, 1986.

Take notice that on June 3, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1986:

Sixteenth Revised Sheet No. 7
Ninth Revised Sheet No. 9

According to Granite State, the filing is made pursuant to the purchased gas cost adjustment provisions in Section XIX of the General Terms and Conditions of its tariff. Granite State further states that the instant rate adjustments reflect changes in the cost of purchased gas at suppliers' rates that will be effective July 1, 1986 and the amortization of Unrecovered Purchased Gas Costs. It is stated that the change in rates reflects principally the in cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which Tennessee proposes to make effective July 1, 1986 in a contemporaneous filing with the Commission.

Granite State further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is a decrease of approximately $7,001,186 annually in its rates for sales to Bay State and $2,860,114 annually for sales to Northern Utilities.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commssion's Rules of Practice and Procedure (18 CFR 385.211,385.214). All such motions or protests should be filed on or before June 16, 1986. 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. 86-73355 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-66-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Notice of Tariff Revisions

June 6, 1986.

Take notice that on June 2, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing Second Revised Sheet Nos. 211, 212, and 213 to First Revised Volume No. 1 of its FERC Gas Tariff.

Tennessee states that Revised Sheet No. 213 is in compliance with Ordering Paragraphs (D), (F) and (G) of the Commission's May 2, 1986, order issued in this proceeding and modifies the new section 4 to its PGA provision to permit Tennessee to revise its rates on an interim basis, in accord with the May 2nd order. In addition, Revised Sheet Nos. 211 and 212 modify Section 3 of its PGA provision in compliance with the Commission's April 23, 1986 order in Docket No. TA85-2-9.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 16, 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. 86-13356 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-119-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Notice of Tariff Filing and Rate Changes

June 6, 1986.

Take notice that on June 3, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing Second Revised Volume No. 1 to its FERC Gas Tariff to be effective July 3, 1986.

Tennessee states that this filing is made concurrently with its application for a blanket transportation certificate authorizing Tennessee to transport gas on behalf of others pursuant to the terms of the Commission Order Nos. 436, *et al.* Further, Tennessee states that Second Revised Volume No. 1, in accord with Part 284 of the Commission's regulations, includes a new Rate Schedule FT, a revised Rate Schedule IT and revised operating conditions providing for scheduling of transportation services on a first come/first served basis, and establishes rates applicable to FT service and revises rates for other services to reflect the recovery of costs through anticipated service under FT Rate Schedule. Also included in Second Revised Volume No. 1 are new Articles XXX, XXXI and XXXII of the General Terms and Conditions which provide for customer funding of certain amounts related to take or pay and gas purchase contract settlement payments made by Tennessee to its producer-suppliers.

Tennessee states that copies of the filing have ben mailed to all of its customers and affected state regulatory commission. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 16, 1986. 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 Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13357 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI73-561-000, etc.]

Mesa Operating Limited Partnership (Successor-in-Interest to Mesa Petroleum Co.); Notice of Application

June 6, 1986.

Take notice that on March 4, 1986, Mesa Operating Limited Partnership (MOLP), of P.O. Box 2009, Amarillo, Texas 79189, filed an application in Compliance with the provisions of the Federal Energy Regulatory Commission's (Commission) Rules under the Natural Gas Act and more particularly with Part 157 thereof, as an independent producer, for a certificate of public convenience and necessity to continue sales being made under permanent certificates of public convenience and necessity heretofore issued to Mesa Petroleum Co. (Mesa), all as more fully shown on the attached Exhibit A and in the application which is on file with the Commission and open to public inspection.

Assignment from Mesa Petroleum Co. to Mesa Operating Limited Partnership was effective December 27, 1985. MOLP respectfully requests that the Commission issue to it a permanent Certificate of Public Convenience and Necessity to continue sales being made under permanent Certificates of Public Convenience and Necessity heretofore issued to Mesa or that each of the said certificates heretofore isued to Mesa be amended by substituting MOLP in lieu of Mesa as the certificate holder in each of the Dockets listed on Exhibit A. MOLP also requests that the related rate schedules listed on Exhibit A be redesignated from Mesa to MOLP.

On May 12, 1986, MOLP filed an amendment to its application in Docket No. CI73-561-000, *et al.*, to include Docket No. CS67-82 in the list of certificate dockets to which MOLP seeks to obtain a successor-in-interest certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1986, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Now—Mesa operating Limited partnership FERC gas rate schedule Nos.	Certificate docket No.	Former—Mesa Petroleum Co., FERC gas rate schedule Nos.	Purchaser
46	CI73-561	46	El Paso Natural Gas Company.
47	G-6083	47	Do.
48	G-6083	48	Do.
49	G-6083	49	Do.
50	G-6083	50	Do.
51	G-6083	51	Southern Union Gathering Company.
52	G10289	52	El Paso Natural Gas Company.
53	G-10602	53	Do.
54	G-13104 & G-20142	54	Southern Union Gathering Company.
55	G-13881	55	Do.
56	CI60-175	56	El Paso Natural Gas Company.
58	CI64-903	58	Colorado Interstate Gas Company.
59	CI65-1260	59	El Paso Natural Gas Company.

EXHIBIT A—Continued

Now—Mesa operating Limited partnership FERC gas rate schedule Nos.	Certificate docket No.	Former—Mesa Petroleum Co., FERC gas rate schedule Nos.	Purchaser
63	C160-175	63	Northwest Pipeline Corporation.
64	C175-23	64	El Paso Natural Gas Company.
65	C175-356	65	Colorado Interstate Gas Company.
66	C175-446	66	Transwestern Pipeline Company.
70	C176-223	70	Natural Gas Pipeline Company of America.
71	C176-273	71	Trunkline Gas Company.
72	C176-321	72	Transwestern Pipeline Company.
75	C176-320	75	ANR Pipeline Company.
76	C176-429	76	Texas Eastern Transmission Corporation.
77	C177-109	77	Natural Gas Pipeline Company of America.
79	C177-316	79	El Paso Natural Gas Company.
80	C177-272	80	Natural Gas Pipeline Company of America.
81	C177-269	81	Do.
83	C177-497	83	Tennessee Gas Pipeline Company.
84	C177-545	84	Panhandle Eastern Pipe Line Company.
85	C177-669	85	Colorado Interstate Gas Company.
86	C177-812	86	Natural Gas Pipeline Company of America.
87	C177-826	87	Tennessee Gas Pipeline Company.
88	C177-830	88	Do.
89	C178-65	89	Do.
90	C178-136	90	Natural Gas Pipeline Company of America.
92	C178-363	92	Transwestern Pipeline Company.
97	C178-640	97	Tennessee Gas Pipeline Company.
103	C178-1046	103	Transcontinental Gas Pipe Line Corporation.
107	C178-404	107	ANR Pipeline Company.
108	C179-332	108	Do.
109	C179-431	109	Tennessee Gas Pipeline Company.
110	C178-414	110	Transcontinental Gas Pipe Line Corporation.
111	C178-471-001	111	ANR Pipeline Company.
112	C178-472	112	Do.
117	G-4316	117	Panhandle Eastern Pipe Line Company.
118	C178-442	118	Northwest Central Pipeline Corporation.
119	C178-442	119	Mobil Oil Corporation.
120	C178-442	120	Northern Natural Gas Company.
122	G-10803	122	Colorado Interstate Gas Company.
123	C178-442	123	Panhandle Eastern Pipe Line Company.
124	C161-24	124	Do.
125	C161-73	125	Colorado Interstate Gas Comapny.
126	C178-442	126	Do.
129	C167-629	129	Panhandle Eastern Pipe Line Company.
131	C170-101	131	Colorado Interstate Gas Comapny.
133	C176-791	133	Do.
135	C178-671	135	Do.
136	C179-473	136	ANR Pipeline Company.
137	C179-516	137	Do.
138	C180-236	138	Transcontinental Gas Pipe Line Corporation.
140	C180-359	140	United Gas Pipe Line Company.
141	C180-355	141	Do.
142	C180-433	142	Trunkline Gas Company.
143	C181-87	143	Transcontinental Gas Pipe Line Corporation.
144	C181-88	144	Do.
145	C181-206	145	Natural Gas Pipeline Company of America.
146	C181-357	146	Columbia Gas Transmission Corporation.
147	C181-365	147	ANR Pipeline Company.
148	C182-354	148	Trunkline Gas Company.
149	C182-48	149	Transcontinental Gas Pipe Line Corporation.
150	C182-354	150	ANR Pipeline Company.
151	C182-436	151	Northern Natural Gas Company.
152	C183-17	152	Texas Eastern Transmission Corporation.
153	C183-26	153	ANR Pipeline Company.
154	C183-23	154	Do.
155	C183-25	155	Do.
156	C183-26	156	Do.
157	C183-45	157	Transcontinental Gas Pipe Line Corporation.
164	C184-339	164	Texas Eastern Transmission Corporation.
165	C184-445	165	Transcontinental Gas Pipe Line Corporation.
168	C184-274	168	ANR Pipeline Company.
170	C184-276	170	Natural Gas Pipeline Company of America.
171	C184-277	171	Panhandle Eastern Pipe Line Company.
172	C184-278	172	ANR Pipeline Company.
173	C184-279	173	Do.
174	C184-280	174	Panhandle Eastern Pipe Line Company.
175	C184-281	175	Colorado Interstate Gas Company.
176	C184-282	176	Northwest Central Pipeline Corporation.
177	C184-283	177	Phillips Petroleum Company.
178	C184-284	178	Do.
179	C184-285	179	Panhandle Eastern Pipe Line Company.
180	C184-286	180	Northern Natural Gas Company.
181	C184-287	181	Colorado Interstate Gas Company.
182	C184-288	182	Natural Gas Pipeline Company of America.
183	C184-289	183	Panhandle Eastern Pipe Line Company.
184	C184-290	184	Colorado Interstate Gas Company.
185	C184-291	185	Natural Gas Pipeline Company of America.
186	C184-292	186	KN Energy, Inc.
187	C184-293	187	Northern Natural Gas Company.
188	C184-294	188	Colorado Interstate Gas Company.
189	C184-295	189	ANR Pipeline Company.

EXHIBIT A—Continued

Now—Mesa operating Limited partnership FERC gas rate schedule Nos.	Certificate docket No.	Former—Mesa Petroleum Co., FERC gas rate schedule Nos.	Purchaser
190	CI84-296	190	Panhandle Eastern Pipe Line Company.
192	CI84-298	192	Do.
193	CI84-299	193	Transwestern Pipeline Company.
194	CI84-300	194	Arkansas Louisiana Gas Company.
196	CI84-301	196	Natural Gas Pipeline Company of America.
197	CI84-302	197	Northern Natural Gas Company.
200	CI84-305	200	Ringwood Gathering Company.
202	CI84-307	202	KN Energy, Inc.
203	CI84-308	203	Natural Gas Pipeline Company of America.
207	CI84-312	207	Northern Natural Gas Company.
208	CI84-313	208	ANR Pipeline Company.
209	CI84-314	209	Colorado Interstate Gas Company.
211	CI84-316	211	Arkansas Louisiana Gas Company.
212	CI84-317	212	Ringwood Gathering Company.
213	CI84-318	213	Northern Natural Gas Company.
214	CI84-319	214	ANR Pipeline Company.
215	CI84-320	215	Do.
216	CI84-321	216	Do.
217	CI84-322	217	Panhandle Eastern Pipe Line Company.
218	CI84-323	218	Colorado Interstate Gas Company.
219	CI84-324	219	ANR Pipeline Company.
220	CI84-325	220	Do.

[FR Doc. 86-13358 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-414-000 etc.]

Plains Petroleum Co.; Notice of Application

June 6, 1986.

Take notice that on May 7, 1986, Plains Petroleum Company (Plains) of P. O. Box 15278, Lakewood, Colorado 80215, filed an application pursuant to section 7 of the Natural Gas Act, as amended, 15 U.S.C. 717f, and §§ 157.23 and 157.24 of the Federal Energy Regulatory Commission's Regulations thereunder, 18 CFR 157.23 and 157.24, for a certificate of public convenience and necessity to make and to continue sales of natural gas to K N Energy, Inc. (K N) and to Northern Natural Gas Company (Northern) as total successor to K N, all as more fully shown on the attached Exhibit "A" and on file with the Commission and open to public inspection.

On January 29, 1985, the Commission issued an order in Docket Nos. CP84-525-000 and CI84-466-000 through CI84-474-000 authorizing Plains to continue certain sales as successor to K N. Subsequently, it was discovered that certain properties were omitted from Plains earlier application. Plains now seeks certificate authorization to make and continue sales from the previously omitted properties as total successor to K N.

Plain requests that the certificates issued to it authorizing the sale from these properties and its rate filings made pursuant thereto be made effective October 1, 1984, to correspond with the effective date allowed by the Commission for all of the other transferred properties pursuant to the January 29, 1985 Order in Docket Nos. CP84-525-000 and CI84-466-000 through CI84-525-000.[1]

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 23, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Docket No.	Purchaser	Location	Rate schedule
CI84-470-001	K N Energy, Inc.	Bradshaw Field, Hamilton County, Kansas	5
CI84-472-001	do	Reydon West Field, Roger Mills, Custer and Washita Counties, Oklahoma.	7
CI84-473-001	do	Panoma Council Grove and Hugoton Fields, Various Counties, Kansas.	6
CI86-414-000	Northern Natural Gas Company, Division of InterNorth, Inc.	Hugoton Field, Kearny County, Kansas	

[FR Doc. 86-13359 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 30 FERC ¶61,086. In its January 29, 1985 Order the Commission states as follows:

We will accept Plains' rate filings as of the requested effective date but will not make the abandonment retroactive.[2] Nevertheless, K N may refer to October 1, 1984 as the effective date of its transference for rate and reporting purposes. This should suffice to afford the substance of the relief requested.

[2] *See Michigan Wisconsin Pipe Line Company, et al.*, 27 FERC ¶61,358 (1984).

[Docket Nos. ER86-517-000, et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co., et al.

June 5, 1986.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER86-517-000]

Take notice that on May 30, 1986, Boston Edison Company (Edison) tendered for filing a letter agreement between itself and Cambridge Electric Light Company (Cambridge), for the use and support by Cambridge of a 115 kv step-down station in Somerville, Massachusetts, owned by Edison and known as Station #402.

Edison requests waiver of the Commission's notice requirements to permit the letter agreement to become effective as of October 1, 1965.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER86-405-000]

Take notice that on May 30, 1986, Boston Edison Company ("Edison") filed an amendment to its filing dated April 14, 1986, which filing was an agreement between itself and Cambridge Electric Light Company ("Cambridge") for the use by Cambridge of a 115/14kv station in Boston, Massachusetts, owned by Edison and known as Station 329.

On April 14, 1986 Edison filed an agreement between itself and Cambridge regarding Cambridge's continued use of Station 329. That agreement permits Cambridge to continue to use Station 329 subject to payment to Edison of (1) an annual support charge developed according to a formula rate contained in Article II of the agreement, (2) a negotiated monthly charge of $41,667 to compensate Edison for the loss in service reliability as a result of Cambridge's continued use of Station 329 beyond May 31, 1985 and (3) costs of equipment modifications required by Edison to serve its own customers while continuing to serve Cambridge. The amendment to that filing consists of the original letter agreement for Cambridge's use of Station 329 from October 1, 1971 through May 31, 1985, which had not previously been filed with the Commission.

Edison requests waiver of the 60 day notice requirement in order to permit the agreement to become effective on October 1, 1971 with the terms of the original agreement.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER86-516-000]

Take notice that on May 30, 1986, the Kansas Power and Light Company (KPL) tendered for filing an amendment to original contract dated November 2, 1983 with the Nemaha-Marshall Electric Cooperative Association, Inc. This amendment provides for increased voltage from 7.2/12 KV to 115 KV. This change will allow the Cooperative to receive energy and demand requirements directly from transmission lines allowing better economies for both the Nemaha-Marshall Electric Cooperative Association, Inc. and KPL. Copies of the filing have been mailed to Nemaha-Marshall Electric Cooperative Association, Inc. and the State Corporation Commission of Kansas.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities

[Docket Nos. ER86-39-000, ER85-720-001, ER86-40-000, ER85-707-001]

Take notice that on May 23, 1986, Northeast Utilities tendered for filing a Compliance Filing pursuant to the Commission's Order dated December 20, 1985. Included in the filing are accounting entries and supporting detail made in February, March and April 1986 to record the treatment of test energy Millstone 3.

Comment date: June 17, 1986, in accordance with Standard Paragraph H at the end of this notice.

5. Pacific Gas & Electric Company

[Docket No. ER86-272-001]

Take notice that on June 2, 1986, Pacific Gas & Electric Company (PG&E) tendered for filing its response to a deficiency letter dated March 21, 1986 from the Director, Division of Electric Power Application Review, Office of Electric Power Regulation (Director). The Director's letter had been in response to PG&E's earlier filing in Docket No. ER86-272-000. This earlier filing was made on January 29, 1986.

PG&E requests waiver of the Commission's regulations to allow an effective date of April 1, 1986 for its filing of increased rates and charges for certain electric transmission and distribution services to the Western Area Power Administration (WAPA).

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER86-408-000]

Take notice that on May 30, 1986, Public Service Company of New Mexico (PNM) submitted for filing revised information concerning PNM's fully allocated costs to provide economy energy service under an Economy Energy Agreement dated May 17, 1982, as amended by Amendment No. 1 dated December 30, 1985, between PNM and the City of Riverside (Riverside).

Copies of the filing have been served upon Riverside and the New Mexico Public Service Commission.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER86-409-000]

Take notice that on May 30, 1986, Public Service Company of New Mexico (PNM) submitted for filing revised information concerning PNM's fully allocated costs to provide economy energy service under an Economy Energy Agreement dated June 15, 1982, as amended by Amendment No. 1 dated December 30, 1985, between PNM and the City of Anaheim (Anaheim).

Copies of the filing have been served upon Anaheim and the New Mexico Public Service Commission.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER86-515-000]

Take notice that on May 30, 1986, South Carolina Electric & Gas Company (SCG&E) tendered for filing a Short Term Power Sales Agreement dated May 27, 1986, between Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Company Services, Inc. (Southern Companies) and SCE&G. This Agreement is one for the sale of energy from SCE&G to Southern Companies of 300 GWH.

SCE&G requests an effective date of June 1, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been mailed to Southern Companies according to SCE&G.

Comment date: June 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER86-437-000]

Take notice that on June 2, 1986, Southern Indiana Gas and Electric Company submitted for filing an additional portion to its filing in this docket. The portion consists of the page containing section 2 of the Service Schedule B, Emergency Service of the proposed Modification No. 5 to the Interconnection Agreement between Southern Indiana Gas and Electric Company and the City of Jasper, Indiana.

Comment date: June 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER86-518-000]

Take notice that on May 30, 1986, Wisconsin Public Service Corporation ("WPSC") tendered for filing an executed supplement to its service agreement with Consolidated Water Power Corporation for service under the firm partial requirements schedule of WPSC's FERC Tariff Volume 1 which is applicable to that customer. The supplement gives the customer, who now specifies the power it is to receive from the Company five years in advance, the flexibility to reduce the specified quantity of WPSC service by 15%, 10% and 5% in the fourth, third and second years, respectively, prior to the actual receipt of service. The supplement also requires the customer to give WPSC long-term notice of its purchases for WPSC when the customer has notice that WPSC is adding a new generating source.

The Company has also submitted a revised tariff sheet to make the tariff consistent with the supplement and the annual demand nominations of Manitowoc and Marshfield Wisconsin, its two other customers who are served under Tariff Volume 1 but who have not adopted the provisions of the new supplement.

WPSC has asked that each of the rate schedule revisions be assigned an effective date of August 2, 1986. WPSC states that copies of the filing have been served upon its W-2 customers and on the Wisconsin Public Service Commission.

Comment date: June 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13364 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-497-000, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

June 5, 1986.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP86-497-000]

Take notice that on May 14, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86-497-000 an application to the Federal Energy Regulatory Commission (Commission) pursuant to section 7(b) of the Natural Gas Act, as amended. Columbia requests an order granting permission and approval to abandon deliveries and sales of natural gas to certain wholesale customers until all unpaid amounts for past deliveries and sales are paid in full, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon further sale and delivery of natural gas to the following wholesale customers until any unpaid bills for such service are paid to Columbia:

(1) The abandonment of natural gas service to Claysville Natural Gas Co. in Rate Zone 6, which consists of a daily entitlement of 2,270 Dth per day under Columbia's SGS Rate Schedule.

(2) The abandonment of natural gas service to Clintonian Fuel & Oil Co. in Rate Zone 4, which consists of a daily entitlement of 2,090 Dth per day under Columbia's SGS Rate Schedule.

(3) The abandonment of natural gas service to Interstate Utilities Co. (former Roy Proffitt) in Rate Zone 4, which consists of a daily entitlement of 840 Dth per day under Columbia's SGS Rate Schedule.

(4) The abandonment of natural gas service to Kane Gas Light & Heating Co. in Rate Zone 6, which consists of a daily entitlement of 1,000 per day under Columbia's SGS Rate Schedule.

(5) The abandonment of natural gas service to Pendleton County Water District in Rate Zone 3, which consists of a daily entitlement of 310 Dth per day under Columbia's SGS Rate Schedule.

(6) The abandonment of natural gas service to Rutland Fuel Co. in Rate Zone 4, which consists of a daily entitlement of 520 Dth per day under Columbia's SGS Rate Schedule.

(7) The abandonment of natural gas service to Rutland Fuel Co. in Rate Zone 4, which consists of a daily entitlement of 520 Dth per day under Columbia's SGS Rate Schedule.

(8) The abandonment of natural gas service to Syracuse Home Utilities in Rate Zone 4, which consists of a daily entitlement of 520 Dth per day under Columbia's SGS Rate Schedule.

(9) The abandonment of natural gas service to Western Lewis-Rectorville Water & Gas District in Rate Zone 3, which consists of a daily entitlement of 700 Dth per day under Columbia's SGS Rate Schedule.

As of April 30, 1986, Columbia alleges that the above wholesale customers were delinquent in their payments for gas purchased from Columbia in the aggregate amount of $3,781,854.80 and that these wholesale customers have been delinquent in their payments for varying periods of time. Columbia further alleges that all nine have been delinquent since January 1, 1985, or earlier and that none of the delinquent

customers have contested their delinquencies nor have they provided a sufficient surety bond as Columbia alleges is required by its FERC Gas Tariff, Original Volume No. 1.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No. CP81–188–007]

Take notice that on May 14, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81–188–007 petition pursuant to section 7 of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP81–188 so as to authorize the continuation through October 31, 1987, of the transportation and delivery of up to 102,000 dekatherms of natural gas to Niagara Mohawk Power Corporation (Niagara Mohawk), as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Consolidated initially received certificate authorization to transport and deliver natural gas to Niagara Mohawk by order issued August 19, 1981 (16 F.E.R.C. ¶ 61,139). The term of this authorization was extended by Commission orders issued in July 30, 1982, January 28, 1983, October 31, 1983, October 4, 1984 and October 16, 1985. The gas is sold by Consolidated to Niagara Mohawk by direct sale and is used by Niagara Mohawk to generate electric power at its Albany, New York, steam plant. The term of the certificated service was extended through October 31, 1986, by the October 16, 1985, Commission order (33 F.E.R.C. ¶ 61,021). Consolidated states that it and Niagara Mohawk have agreed to extend the contractual arrangement for additional year through October 31, 1987, and Consolidated seeks authorization for such service.

Consolidated proposes to continue charging Niagara Mohawk the same 100% load factor Rate Schedule RQ rate, subject to all purchased gas cost adjustments, as required by the previous Commission Orders. Niagara Mohawk is an on-system resale customer of Consolidated, located within Consolidated's traditional market area in upstate New York. Consolidated provides 100% of Niagara Mohawk's gas supply.

Consolidated states that the subject natural gas is surplus to the needs of Consolidated's present customers throughout the proposed one-year extension. Consolidated states that approval of its proposal herein will help it to maintain an appropriate level of demand sufficient to promote the development of long-term gas supplies, will afford Consolidated needed market flexibility, will assist Consolidated in maintaining an appropriate level of purchases from its pipeline and producer-supplies, and will provide Niagara Mohawk with continued supply flexibility for its Albany steam plant, to the benefit of its customers.

Comment date: June 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. MIGC, Inc.

[Docket No. CP86–502–000]

Take notice that on May 16, 1986, MIGC, Inc. (Applicant), 10701 Melody Drive, Northglenn, Colorado 80234, filed in Docket No. CP86–502–000 an application pursuant to section 7(c) of the Natrual Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a transportation agreement dated November 1, 1985, Applicant has agreed to transport on an interruptible basis up to 35,000 Mcf of natural gas per day for EES. It is alleged that the proposed transportation service would facilitate the sale of natural gas by Western Gas Processors, Ltd.,[1] to Mountain Industrial Gas Supply, pursuant to a gas purchase agreement dated September 1, 1985. It is stated that EES would deliver the gas to Applicant at three existing receipt points in Campbell County, Wyoming, for redelivery to Colorado Interstate Gas Company (CIG) at the Powder River Station in Converse County, Wyoming. Applicant states that transportation to date has been provided pursuant to section 311 of the Natural Gas Policy Act of 1978 and was reported to the Commission in Docket No. ST86–1153–000.

Applicant further requests authority to transport on an interruptible basis of up to 30,000 Mcf of natural gas per day on behalf of EES as seller of gas to Hadson Gas Systems, Inc. Applicant would perform such service pursuant to a gas transportation agreement dated, March 1, 1986. Applicant would transport the gas from three receipt points in Campbell County, Wyomng, to CIG at the Powder River Station in Converse County, Wyoming.

The rate to be charged for the proposed transportation service would be 25 cents per MMBtu equivalent of gas, said to be pursuant to a settlement in Docket No. RP84–15–000 approved by the Commission on March 26, 1986, which is equal to the rate in effect for Applicant's Rate Schedule TE–1 under which Applicant is authorized to provide comparable system-wide transportation service.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Mississippi River Transmission Corporation

[Docket No. CP86–477–000]

Take notice that on April 28, 1986, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP86–477–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessiry authorizing the construction and operation of certain natural gas facilities and the increase of gas sales to Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), all as more fuly set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to increase Arkla's daily contract demand from 28,500 Mcf to 28,850 Mcf. It is stated that the 350 Mcf per day increase in contract demand would be used by Arkla to provide new natural gas service in Bossier Parish, Louisiana. Applicant proposes to construct and operate tap and meter facilities in Bossier Parish in order to make the proposed firm sales. It is estimated that these facilities would cost approximately $40,000.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Moraine Pipeline Company

[Docket No. CP86–492–000]

Take notice that on May 12, 1986, Moraine Pipeline Company (Moraine), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–492–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity to enable it to provide transportation service for others and, pursuant to § 284.7 of the Commission's Regulations, Moraine has submitted its

[1] EES is said to be the managing general partner of Western.

rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specially, Moraine states that it intends to transport natural gas on behalf of others and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85–1–000. Moraine states that it would acdept and would comply with the conditions of § 284.221(c) of the Commission's Regulations.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Moraine Pipeline Company

[Docket No. CP86–494–000]

Take notice that on May 12, 1986, Moraine Pipeline Company (Moraine), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–494–000 an application pursuant to section 7(c) of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for an optional certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities and the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Moraine requests authorization to construct approximately 17.8 miles of 20-inch pipeline and related facilities from an interconnection with Natural Gas Pipeline Company of America (Natural) in Lake County, Illinois, to the Illinois-Wisconsin state boundary at a proposed interconnection in Kenosha County, Wisconsin, with Wisconsin Natural Gas Company (Wisconsin Natural) to be constructed by Wisconsin Natural. The cost of the proposed facilities is approximately $6.4 million which cost would be met from funds on hand.

Moraine also requests authorization to transport up to 90,000 MMBtu of natural gas per day on an interruptible basis on behalf of Wisconsin Natural through the facilities proposed herein. Moraine proposes to charge Wisconsin Natural 13.64 cents per MMBtu of gas received. The proposed service would be for a primary term of ten years and from month to month thereafter.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP86–493–000]

Take notice that on May 12, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–493–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport up to 90,000 MMBtu of natural gas per day on an interruptible basis for Wisconsin Natural Gas Company (Wisconsin Natural) and the construction and operation of top facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Natural proposes to transport on an interruptible basis, up to 90,000 MMBtu of natural gas per day for Wisconsin Natural from various receipt points on Natural's system for delivery to Moraine Pipeline Company (Moraine) in Lake County, Illinois, for Wisconsin Natural's account. The proposed service would be for a primary term of ten years and from month to month thereafter. Natural proposes to charge Wisconsin Natural its current Rate Schedule T–I rate of 30.32 cents per MMBtu of gas received at the various receipt points plus the effective Gas Research Institute surcharge per MMBtu, if required by the Commission.

Natural also proposes to construct tap facilities in Lake County, Illinois, to connect its pipeline facilities to the proposed pipeline facilities of Moraine. The estimated cost of these tap facilities is $74,000 which cost would be met from funds on hand.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP86–503–000]

Take notice that on May 19, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–503–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport a maximum of 125,000 MMBtu equivalent of natural gas per day for Northwest Central Pipeline Corporation (NW Central), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to provide an interruptible transportation service for NW Central for a period of two years from the date of first delivery and month-to-month thereafter. Applicant would provide such service pursuant to a gas transportation agreement between Applicant and NW Central dated May 1, 1986. NW Central is said to have informed Applicant that it has filed a petition in Docket No. CP80–499–008 to amend the certificate issued in Docket No. CP80–499–000 the limited-term sale of natural gas to El Paso Natural Gas Company (El Paso). It is explained that the gas sold by NW Central, would be transported by Applicant and redelivered to El Paso for El Paso's system supply.

Applicant states that gas for El Paso's account would be delivered to Applicant by NW Central at the existing points of interconnection between the facilities of Applicant and NW Central located in Barton and Ford Counties, Kansas. Applicant proposes to redeliver the gas, less 0.5%, initially, for fuel consumed and lost and unaccounted-for gas, to the existing point of interconnection between the facilities of Applicant and El Paso in Lea County, New Mexico.

Applicant proposes to charge NW Central transportation rates of 19.3 cents and 16.3 cents for each MMBtu equivalent of gas received in Barton and Ford Counties, Kansas, respectively, for transportation and redelivery to Lea County, New Mexico.

It is stated that no new facilities would be required for this service. Applicant, however, requests authorization to add and delete additional receipt points in the future that may be necessary to support this service.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Northern Natural Gas Comapny Division of InterNorth, Inc.

[Docket No. CP85–636–001]

Take notice that on May 8, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–636–001 an amendment to its application filed in Docket No. CP85–636–000 pursuant to section 7(c) of the Natural Gas Act, for authority to implement, effective October 27, 1985, proposed adjustments to the firm entitlements of certain of Northern's market area utility customers, as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its original application, Northern proposed to effect on March 27, 1985, certain adjustments to the firm entitlement of its market area utility

customers as a result of a stipulation and agreement of settlement filed in resolution of issues in Docket Nos. RP82–71, TA83–1–59, TA84–1–59, and TA85–1–59 (RP82–71 stipulation and agreement). Northern states that, subsequently, the Commission has remanded the RP82–71 stipulation and agreement to the administrative law judge as to all participants for the purpose of developing a record upon which a decision on the contested issues regarding the offer of settlement may reasonably be based.

It is indicated, however, that Northern has agreed in its stipulation and agreement of settlement filed in resolution of issues in Docket No. RP85–206 (RP85–206 stipulation and agreement) to implement effective October 27, 1985, the changes in firm entitlement proposed herein. Consequently, in view of the remand of the RP82–71 stipulation and agreement and the agreement reached in the RP85–206 stipulation and agreement, Northern is amending its application to change from March 27, 1985, to October 27, 1985, the effective date of the proposed adjustments to firm entitlements.

Northern indicates that Northern's amendment should not be considered as a rescission of its previous agreement to implement the proposed changes in firm entitlement effective March 27, 1985. Northern advises that it still intends to effectuate the proposed adjustments effective March 27, 1985, as agreed to by all parties in the RP82–71 stipulation and agreement.

Comment date: June 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP86–501–000]

Take notice that on May 16, 1986, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–501–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point for an existing wholesale customer under the certificate issued to Northern in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern requests authorization to construct and operate certain facilities necessary to provide a small-volume delivery point in LaCrosse County, Wisconsin, to an existing wholesale customer, Midest Natural Gas (Midwest). Northern states that Midwest would provide natrual gas service to the community of St. Joseph, Wisconsin. Northern also states that the gas to be transported through the proposed point of delivery is within its currently authorized level of sales and that such gas volumes would not affect the peak day and annual deliveries to which Midwest is entitled.

Northern further states that the total estimated cost of construction for the proposed facility is $20,070 and that Midwest would not be required to make a contribution in aid of construction.

Comment date: July 21, 1986, in accordance with Standard Pargraph G at the end of this notice.

11. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP–86–490–000]

Take notice that on May 9, 1986, Northern Natural Gas Company, Division of InterNorth, Inc., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–490–000, a request pursuant to §§ 157.205 and 157.216 (18 CFR 157.205 and 157.216) for permission and approval to abandon and remove 31 measuring stations in the states of Kansas, Minnesota, Iowa, Nebraska and Oklahoma under the cerfiticate issued in Docket No. CP82–401–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that is has been advised by Peoples Natural Gas Company, North Central Public Service Co., and Southern Union Gas Co. that 31 of their small volume measuring station customers no longer desire natural gas service and wish to have their measuring stations removed. It is asserted that the estimated cost of removing such facilities is $3,296.

Comment date: July 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Central Pipeline Corp.

[Docket No. CP86–495–000]

Take notice that on May 12, 1986, Northwest Central Pipeline Corporation (Northwest Central) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–495–000 a request pursuant to § 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new sales facility for the direct interruptible sale of natural gas to Truckstop Distributors, Inc. (TDI), in Newton County, Missouri, under the blanket authorization issued to Northwest Centarl in Docket No. CP82–479–000, 20 FERC ¶ 62,502, (1982) and as amended in Docket No. CP82–479–001, 26 FERC ¶ 61,060 (1984), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central proposes to construct and operate a sales facility consisting of a pipeline tap on its 16-inch mainline in Newton County, Missouri, and metering, regulating and appurtenant facilities for the delivery of natural gas to TDI for use in its truckstop and motel. Northwest Central estiamtes annual and peak day market requirements will be 16,000 Mcf and 76 Mcf, respectively. Northwest Central estimates the cost of the sales facility will be $6,350.

Comment date: July 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

13. Northwest Central Pipeline Corporation

[Docket No. CP86–498–000]

Take notice that on May 14, 1986, Northwest Central Pipeline Corporation (Applicant), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–498–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to JADAN Natural Gas Company (JADAN) and the necesary facilities used to make this sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the sale of gas to JADAN, which gas JADAN resells to the City of Wynona, Osage County, Oklahoma, and to abandon the meter and appurtenant facilities used to make this sale. Applicant states that JADAN has not paid for all gas delivered to it and as of May 1, 1986, owes Applicant $225,017.90, and that the debt continues to increase each month. Applicant estimates that the cost of removal of these facilities would be $590 with a salvage value of $1,040.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

14. Panhandle Eastern pipe Line Company

[Docket No. CP86-486-000]

Take notice that on May 2, 1986, Panhandle Eastern Pipe Line Company (Applicant), P. O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP86-486-000 and application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of the Archer Daniels Midland Company (ADM) through October 31, 1986, all as more fully set forth in the application which is on file with the Commission and open for inspection.

Specifically by this application, Applicant requests Commission authorization to implement a February 5, 1986, transportation agreement (Agreement), as amended on April 15, 1986, between Applicant, ADM, and ADM's local distribution company, Illinois Power Company (Illinois Power). Pursuant to the Agreement, Applicant has agreed to transport on behalf of ADM up to 55,000 Mcf of natural gas per day, which ADM purchases from Quivera Gas Company (Quivera) and Delta Gas Resources (Delta). Applicant states that it would receive the gas for ADM's account from Quivera and Delta from various existing points of receipt located in Moore County, Texas, Kiowa County, Kansas, and Kingfisher, Cimarron and Woods Counties, Oklahoma. Applicant states that it would redeliver the gas for ADM's account, to Illinois Power at the existing point of interconnection at the Mt. Zion sales station in Macon County, Illinois, and that Illinois Power would ultimately deliver the gas to ADM in Decatur, Illinois. The transportation rate for this service is pursuant to Applicant's Rate Schedule OST. Applicant requests authority to add points of receipt and delivery subject to certain reporting requirements and authority to construct new points of receipt subject to the annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83-83.

Comment date: June 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to b taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13363 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-488-000, et al.]

Natural Gas Certificate Filings; K N Energy, Inc., et al.

June 6, 1986.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-488-000]

Take notice that on May 7, 1986, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-488-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer to its wholly-owned subsidiary, Plains Petroleum Company (Plains), certain natural gas properties and related production facilities which were inadvertently overlooked and omitted from Applicant's previously approved application to transfer all of its producing properties to Plains in Docket No. CP84-525-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the abandonment by transfer would not adversely affect the nature or price of natural gas service to Applicant's customers, but would improve administrative, accounting, regulatory, and operational efficiency. The sole purpose of the filing is to complete the transfer of all of Applicant's pipeline production to Plains which was authorized under Docket No. CP84-525-000.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Mantaray Transmission Company

[Docket No. CP86-507-000]

Take notice that on May 21, 1986, Mantaray Transmission Company (Mantaray) 3000 Bissonnet, Houston, Texas 77251, filed in Docket No. CP86-507-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mantaray states that it does not have any present operations but would upon the Commission's issuance of an optional certificate of public convenience and necessity requested by

it in Docket No. CP86–508–000 purusant to Subpart E of Part 157 of the Regulations (18 CFR 157.000, *et seq.*) be a natural gas company engaged in the business of transporting natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the Natural Gas Act.

Mantaray states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP86–499–000]

Take notice that on May 15, 1986, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–499–000 a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon storage service performed by NGPL under its Rate Schedule LS–1 for certain existing customers, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

NGPL proposes to abandon its LS–1 storage service of 50,000 Mcf of natural gas per day dedicated to certain existing customers retroactive to March 31, 1986, in accordance with terms of the service agreements between NGPL and its customers and as authorized in Docket No. CP75–256. NGPL is returning or would return cushion gas provided by said customers as specified in the LS–1 Rate Schedule, or as agreed to between the parties. NGPL does not propose to abandon any of the facilities which were originally constructed to implement the service.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP86–345–001]

Take notice that on May 15, 1986, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP86–345–001 an amendment to its application filed in Docket No. CP86–345–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term interruptible transportation of natural gas for Oregon Steel Mills (Oregon Steel), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northwest amends its application filed February 25, 1986, in Docket No. CP86–345–000, to request authority to provide a limited-term interruptible transportation service of up to 3,500 MMBtu equivalent of natural gas per day, instead of the originally proposed 2,500 MMBtu per day, for Oregon Steel pursuant to the terms of the February 17, 1986, gas transportation agreement, as amended April 28, 1986. Northwest states that other than the volume increase, Northwest's transportation proposal remains unchanged.

Northwest proposes to transport Oregon Steel's gas from various receipt points on its system to its existing Portland West/Scappoose Meter Station in Multnomah County, Oregon, where thermally equivalent volumes, less fuel, would be delivered to Northwest Natural Gas Company for Oregon Steel's account for a term of two years. For all volumes of gas transported by Northwest under the transportation agreement, Northwest proposes to retain transportation fuel in kind and to charge Oregon Steel either its incremental on-system transportation rate or replacement on-system transportation rate, as applicable, in accordance with its FERC Gas Tariff, Volume No. 2.

Comment date: June 27, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP86–504–000]

Take notice that on May 20, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP86–504–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the continuation of transportation authority on behalf of certain shippers received by Commission order dated April 30, 1986, in Docket No. CP86–243–000 and Commission order dated May 1, 1986, in Docket Nos. CP86–216–000, CP86–217–000, CP86–222–000, CP86–223–000, CP86–242–000, CP86–255–000 and CP86–256–000, all as more fully set forth in the application which is on file with the Commission and open for inspection.

Applicant requests authorization for an extension of the term of such authorizations until the earlier of (1) one year from the date of the original authorizations in these dockets or (2) the effective date of Commission's approval of and Applicant's acceptance of a blanket transportation certificate under Order No. 436. The contracts submitted in the referenced dockets extend the term of those respective contracts until October 31, 1986. Applicant states that it would tender an additional amendment, for each of the thirty-nine shippers, conforming with the term as requested in this application. Applicant states that upon execution by the parties it would supplement this filing with this additional amendment. This service is said to be pursuant to Applicant's currently effective Rate Schedule OST. Applicant also requests (1) authorization to abandon service to Midwest Solvents Company previously authorized on May 1, 1986, Docket No. CP86–217–000 and (2) to change the transportation service for R. R. Donnelley and Sons as approved on May 1, 1986, in Docket No. CP86–223–000 from 600 Mcf to 900 Mcf of gas per day.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP86–500–000]

Take notice that on May 15, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–500–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of Atlanta Gas Light Company (Atlanta), acting as agent for the transportation of natural gas for Chemical Products Corporation (Chemical), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 1.7 billion Btu of gas per day on an interruptible basis for Atlanta for a term of one year. It is stated that gas purchased by Chemical from Consolidated Fuel Supply, Inc. (Consolidated), would be delivered to Southern by Atlanta at 10 existing points of delivery on Southern's pipeline system. Equivalent quantities of gas would be redelivered by Southern to Atlanta at existing interconnection between Southern and Atlanta in the vicinity of Atlanta, Georgia, for ultimate delivery to Chemical's plant in Cartersville, Georgia.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Chemical obtains alternative sources of natural gas. Southern states that the

flexible authority would not be used to authorize a change in the recipient of the service, the location of the redelivery point or the maximum daily quantity of gas transported by Southern.

Southern would charge Atlanta 48.2 cents per million Btu for the transportation service except that it would charge 77.6 cents per million Btu for volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta exceeded the daily contract demand of Atlanta. Southern would collect a Gas Research Institute surcharge of 1.35 cents per Mcf of gas redelivered to Atlanta.

Southern's application states that all transportation services would be conditioned upon the availability of capacity sufficient for Southern to perform the proposed services without detriment or disadvantage to Southerns' obligations to its customers.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP86-426-000]

Take notice that on April 9, 1986, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-426-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and related facilities in southern Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate additions as described below to its pipeline system to replace transportation services currently provided by Natural Gas Pipeline Company of America (NGPL) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), which would expire in the near future. Applicant notes that the services provided by NGPL and Tennessee are used by Applicant to receive gas supplies purchased by it, primarily offshore, which suplies are either remote to its system or exceed the capacity of Applicant's existing system. It is stated that the proposed facilites include

(1) Approximately 51.9 miles of 30-inch pipeline loop on a portion of its existing Bayou Sale line from its Centerville compressor station to its Kaplan compressor station,

(2) Approximately 9.9 miles of 24-inch pipeline loop on a portion of its existing transmission line west of its Kaplan compressor station,

(3) Approximately 2.5 miles of 20-inch pipeline to connect the terminus of U-T Offshore System (UTOS) to the Stingray Pipeline Company (Stringray), Holly Beach compressor station, and

(4) Approximately 35 miles of 30-inch pipeline from the Holly Beach compressor station to Applicant's transmission line in Calcasieu Parish, Louisiana.

Applicant states that the estimated cost of facilities is $79,400,000. Applicant proposes to finance the project with funds on hand and short term bank loans.

Applicant asserts that the long run unit cost of the proposed facilities would be less than the cost of the NGPL and Tennessee transportation services. Applicant states that capacity requirements on its system upstream and dowstream of the project would not change.

Comment date: June 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designed on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13351 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2641-001, et al.]

Phillips 66 Natural Gas Co.; Application of Phillips 66 Natural Gas Company for Certificate of Public Convenience and Necessity to Render Service Previously Authorized by the Commission in Certificates of Public Convenience and Necessity Issued to Phillips Petroleum Company and for Substitution of Phillips 66 Natural Gas Company in Other Related Proceedings

June 6, 1986.

Take notice that on March 3, 1986, Phillips 66 Natural Gas Company (Applicant), of 336 Home Savings & Loan Building, Bartlesville, Oklahoma 74004, filed an application pursuant to section 7 of the Natural Gas Act and §§ 157.23(b) and 157.24 of the Federal Energy Regulatory Commission's (Commission) Regulations for a Certificate of Public Convenience and Necessity to render service previously authorized to Phillips Petroleum Company, requesting that Applicant be substituted for Phillips Petroleum Company in any related proceedings presently pending before the Commission and requesting redesignation of Phillips Petroleum Company's Rate Schedules, as shown in Exhibit A and in the application on file with the Commission and open to public inspection.

By a Contribution Agreement dated and effective January 1, 1986, Phillips Petroleum Company assigned certain properties to Applicant. Generally, under the terms of the Contribution Agreement, Applicant was assigned and succeeded to the former Gas and Gas Liquids business of Phillips Petroleum Company.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 23, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

Phillips Petroleum Company Rate Schedule No.	Purchaser	Phillips certificate docket No.
4	ANR Pipeline Company	G-2641
5	Panhandle Eastern Pipeline Company.	G-2623 *
	do	G-2645
7	El Paso Natural Gas Company.	G-2625
9	do	G-2611
		G-13655
10	do	G-2644
32	do	G-3356
		G-2605
		G-2619
		G-18085
		G-15306
33	do	G-2625
	do	G-18085
	do	G-15306
59	do	G-13655
64	do	G-17631
68	Northwest Central Pipeline Company.	G-3359
243	El Paso Natural Gas Company.	G-14841
		G-8842
294	Northern Natural Gas Company.	G-12690
310		
353	Panhandle Eastern Pipeline Company.	G-19544
359	El Paso Natural Gas Company.	G-20371
363	do	CI60-0225
		G-9299
377	ANR Pipeline Company	CI61-1237
381	Northern Natural Gas Company.	CI62-0929
386	do	CI62-1462
399	Panhandle Eastern Pipeline Company.	CI63-1371
400	El Paso Natural Gas Company.	CI64-0918
406	do	CI65-0273
410	do	CI65-0624
419	Panhandle Eastern Pipeline Company.	CI66-0558
433	El Paso Natural Gas Company.	CI66-0905
438	do	CI67-1768
447	Panhandle Eastern Pipeline Company.	CI68-1274
450	Northern Natural Gas Company.	CI68-0816
470	do	CI69-1067
478	Panhandle Eastern Pipeline Company.	CI68-1274
479	do	CI70-0917
483	El Paso Natural Gas Company.	CI71-0530
484	do	CI71-0560
485	do	CI71-0663
488	do	CI72-0169
490	Northern Natural Gas Company.	G-09224

EXHIBIT "A"—Continued

Phillips Petroleum Company Rate Schedule No.	Purchaser	Phillips certificate docket No.
491	do	CI72-0239
497	El Paso Natural Gas Company.	CI72-0590
498	do	CI72-0591
499	do	CI72-0592
500	do	CI72-0593
501	do	CI72-0594
502	do	CI72-0595
503	do	CI72-0596
504	do	CI72-0597
505	do	CI72-0598
506	do	CI72-0685
507	do	CI72-0686
514	do	CI72-0732
516	Transwestern Pipeline Company.	CI73-0309
520	do	CI73-0308
532	Northern Natural Gas Company.	G-08324
533	do	G-02629
549	ANR Pipeline Company	G-02641
561	Panhandle Eastern Pipeline Company.	CI74-0704
565	do	CI75-0042
567	do	CI72-0814
569	Northern Natural Gas Company.	G-09224
572	ANR Pipeline Company	CI75-0487
585	do	G-02641
590	Northern Natural Gas Company.	G-09724
591	ANR Pipeline Company	CI76-0708
592	do	CI76-0708
593	El Paso Natural Gas Company.	CI76-0490
602	ANR Pipeline Company	CI77-0281
605	Panhandle Eastern Pipeline Company.	CI77-0385
606	El Paso Natural Gas Company.	CI76-0268
610	ANR Pipeline Company	G-02641
617	El Paso Natural Gas Company.	CI78-0441
636	ANR Pipeline Company	CI79-0097

Phillips Oil Company rate schedule No.	Aminoil, Inc. rate schedule No.	Purchaser	Aminoil, Inc. certificate docket No.
85	1	Northwest Central Pipeline Company.	G-2570
87	8	Williston Basin Interstate Pipeline Company.	CI61-1271
88	10	Northwest Central Pipeline Company.	CI64-0612
89	14	Lone Star Gas Company.	G-3978
90	15	do	CI62-0098
91	16	do	CI62-0098
95	24	do	CI66-0020
97	27	Panhandle Eastern Pipe Line Company.	CI70-0375
98	29	Lone Star Gas Company.	G-6668
99	30	do	CI62-739
100	31	do	CI63-577
101	33	do	G-6668
102	34	do	CI77-226
103	35	do	CI71-910

*Tentatively Designated.

[FR Doc. 86-13365 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 86-392-000]

San Diego Gas & Electric Co.; Amended Filing

June 4, 1986.

Take notice that on May 29, 1986, San Diego Gas & Electric Company ("SDG&E") tendered for filing rate information intended to supplement its April 4, 1986 filing in Docket No. ER 86-392-000. Today's filing clarifies the definition of Incremental Energy Cost contained in the Interchange Agreement between Salt River Project Agricultural Improvement and Power District and San Diego Gas & Electric Company.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13361 Filed 6-1-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI78-532-000]

Texaco Producing Inc.; Application by Texaco Producing Inc. as Successor-in-Interest for Certificates of Public Convenience and Necessity and for Redesignation of Related Rate Schedules

June 6, 1986.

Take notice that on March 5,1 986, Texaco Producing Inc. (Applicant) of P.O. Box 52332, Houston, Texas 77052, filed an application pursuant to the provisions of the Natural Gas Act for Certifications of Public Convenience and Necessity as successor-in-interest to Texaco Inc. to continue to sell gas covered by the gas purchase contracts listed in the attached Exhibit "A" which is on file with the Commission and open to public inspection.

On December 31, 1984, Applicant acquired by assignment the interest of Texaco Inc., Assignor, in certain

properities described in contracts identified in the attached Exhibit "A". Applicant requests that the Commission issue to it permanent Certificates of Public Convenience and Necessity to continue sales being made under permanent certificates issued to Texaco Inc. in each of the dockets listed in the attached Exhibit "A" by substituting Texaco Producing Inc., in lieu of Texaco Inc., as certificate holder and Applicant is also requesting that the gas rate schedules of Texaco Inc. listed on Exhibit "A" be redesignated as rate schedules of Applicant.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 23, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commissioner's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

Formerly: Texaco Inc. FERC gas rate schedule No.	Now: Texaco Producing Inc. FERC gas rate schedule No.	Certificate docket No.	Purchaser	State	County
576		CI 78-532	Natural Gas Pipeline	LA	Offshore.
612		CI 82-308	United Gas Pipeline	LA	Offshore.
615		CI 83-408	Bridgeline Gas Distribution	LA	Offshore.

[FR Doc. 86-13362 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-123-000]

Algonquin Gas Transmission Co.; Cancellation of Rate Schedule S-IS

June 10, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 6, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-third Revised Sheet No. 213—Statement of Effective Rates
First Revised Sheet No. 421—Notice of Cancellation of Rate Schedule S-IS
First Revised Sheet No. 771—Notice of Cancellation of Form of Service Agreement for Rate Schedule S-IS

Algonquin Gas states that the tariff sheets reflect the cancellation of Rate Schedule S-IS pursuant to self-executing termination approved by order issued November 30, 1983, in Docket No. CP83-389.

Algonquin Gas states that such tariff sheets are proposed to be effective as of June 16, 1986.

Algonquin Gas further states that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211, 385.214. All such motions or protests should be filed on or before June 19, 1986. 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. 86-13417 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-122-000]

West Texas Gathering Co.; Tariff Filing

June 10, 1986.

Take notice that on June 4, 1986, West Texas Gathering Company tendered for filing Sixth Revised Sheet Nos. 51-A through 51-D to its FPC Gas Tariff, Original Volume No. 1.

West Texas Gathering Company states that the tariff sheets show the proposed tariff with Northern Natural Gas Company, Division of InterNorth, Inc. for the period April 1, 1985 to April 1, 1986.

West Texas Gathering Company requests a waiver of the Commission's regulations as is necessary to permit the rate reduction to become effective as of April 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 18, 1986. 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. 86-13418 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-520-000, et al.]

Electric Rate and Corporate Regulation Filings; Kansas Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Kansas Power and Light Company

[Docket No. ER86-520-000]

June 6, 1986.

Take notice that on June 2, 1986, the Kansas Power and Light Company (KPL) tendered for filing an amendment to original contract dated November 21, 1973 with the P.R.&W. Electric cooperative Association, Inc. (PRW). This contract has been assigned to Kansas Electric Power Cooperative, Inc. (KEPCo) by PRW. This amendment provides for increased maximum delivery point capacity to Peddicord from 2,500 KW to 3,200 KW, and Soldier, from 500 KW to 750 KW. Copies of the filing have been mailed to P.R.&W. Electric Cooperative Association, Inc., Kansas Electric Power Cooperative, Inc., and the State Corporation Commission of Kansas.

Comment date: June 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Western Massachusetts Electric Company

[Docket No. ER86-519-000]

June 6, 1986.

Take notice that on June 2, 1986, Western Massachusetts Electric Company ("WMECO") tendered for filing Rider B to the Wholesale for Resale Total Requirements Service, Rate Schedule 2 (WMECO's FERC Rate Schedule 2)("Rate Schedule 2") for firm wholesale electric service provided by WMECO to the Town of Chester, Massachusetts, the Town of Russell, Massachusetts and Fletcher Gas and Electric Company (collectively referred to as the "Customers").

WMECO states that Rider B provides a mechanism to be incorporated in Rate Schedule B which facilitates the delivery to the Customers of the Customers' entitlement(s) in the output of the New York Power Authority's power projects. Rider B establishes a mechanism by which the Customers may obtain an entitlement(s) in power projects of the New York Power Authority, assign the power to the Company for delivery across the transmission and distribution system of the Northeast Utilities operating companies and credit the value of such power against bills rendered under the Company's Rate Schedule 2.

WMECO and the Customers propose to make Rider B to Rate Schedule 2 effective as of July 1, 1985 in conjunction with the commencement of the power flow from entitlements in the New York Power Authority power projects. In order to accomplish this effective date, WMECO has requested a waiver of the prior notice requirement of the Commission's regulations.

Comment date: June 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power Company

[Docket No. ER86-521-000]

June 6, 1986.

Take notice that The Washington Water Power Company ("WWP") of Spokane, Washington on June 2, 1986 tendered for filing the Second and Third Supplements to a Transmission Wheeling Rate Schedule FERC 125. This rate schedule is related to transmission wheeling service for borderline customer loads provided only to Pacific Power and Light Company ("Pacific") under a currently existing Transmission Agreement. The Second Supplement establishes the initial compensation factors and loss factors for Pacific customer loads at Newport and Priest River, Idaho. The Third Supplement increases the compensation factors to Newport and Priest River in order to reflect an increase in transmission investment by WWP. The new compensation factors contained in the Third Supplement would provide WWP with approximately $33,712/yr more revenue than provided by the compensation factors contained in the Second Supplement based on the 12 month period ending December 31, 1985.

WWP has billed Pacific for service to Newport and Priest River as provided in Supplement 2 since February 1, 1984. In addition, the Cabinet-Rathdrum 230 kV transmission line rebuild (the major factor influencing the increased compensation charges in Supplement 3) was completed prior to November 1, 1985. WWP has therefore requested that the sixty day notice provision be waived and that supplement 2 be effective February 1, 1984 and that Supplement 3 be effective November 1, 1985.

WWP states that copies of its filing have been served on Pacific, the Idaho Public Utilities Commission and the Washington Utilities and Transportation Commission.

Comment date: June 19, 1986, in accordance with Standard Paragrap E at the end of this notice.

4. Iowa Power and Light Company

[Docket No. ES86-44-000]

June 10, 1986.

Take notice that on May 29, 1986, Iowa Power Light Company (Applicant) filed an application seeking an order pursuant to Section 204 of the Federal Power Act, authorizing issuance of $100,000,000 principal amount of First Mortgage Bonds via negotiated placement.

Comment date: June 26, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ES86-45-000]

June 10, 1986.

Take notice that on June 3, 1986, Minnesota Power & Light Company (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of approximately 13,700,000 shares of Common Stock, without par value, in connection with a two-for-one Common Stock split.

Comment date: June 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Western Area Power Administration

[Docket No. EF86-5151-000]

June 10, 1986.

Take notice that on June 3, 1986, the Under Secretary of the Department of Energy submitted for confirmation and approval on a final basis revised Rate Schedules SP-FT2 and SP-NFT2 of the Western Area Power Administration (Western) for the transmission of power over the Colorado River Storage Project (CRSP) system. The rate schedules are submitted for confirmation and approval on a final basis for a 5-year period. The Under Secretary states that the rate schedules have been confirmed and approved on an interim basis, to be effective on the first day of the July 1986 billing period. The new rates will be in effect pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The transmission rate study dated October 1985, on which the transmission rates are based, indicates that a firm transmission rate of $15.94 per kW-year and a nonfirm transmission rate of 3.1 mills per kWh are necessary to recover transmission costs. This represents an increase of $5.67 per kW-year for firm transmission service and 1.1 mill per kWh for nonfirm transmission service. The increase is needed to recover the increased costs for operations, maintenance, replacements, and investments associated with the addition of the Western Colorado Transmission System to the CRSP system.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates consistent with sound business principles. The Under Secretary states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

Comment date: June 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Western Area Power Administration

[Docket No. EF86-5081]

June 10, 1986.

Take notice that on June 3, 1986, the Under Secretary of the Department of Energy submitted for confirmation and approval on a final basis a new Rate Schedule CP-F/NF-2 for Colbran Project power marketed by the Western Area Power Administration (Western). The rate schedule is submitted for confirmation and approval on a final basis for a 5-year period. The Under

Secretary states that the rate schedule has been confirmed and approved on an interim basis, to be effective on the first day of July 1986 billing period. The new rate schedule will be in effect pending the Commission's approval of it, or a substitute rate, on a final basis, or until superseded.

The final revised power repayment study dated January 1986, on which the power rate is based, indicates that a firm and nonfirm energy rate of 21.8 mills per kWh is necessary for project repayment. The new rate is an increase of 2.5 mills per kWh (12.9 percent) over the existing rate. Average annual project revenues are expected to increase from $1,079,665 to $1,217,556. The new rate is necessary to meet an increase in project interest expense caused by higher interest rates for additions and replacements in future years. The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

Comment date: June 27, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13419 Filed 6-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9706-000, et al.]

Hydroelectric Applications (Mechanicville Corp., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (Over 5 MW).

b. Project No.: 9706-000.

c. Date Filed: December 23, 1985.

d. Applicant: Mechanicville Corporation.

e. Name of Project: Mechanicville Project.

f. Location: On the Hudson River in Saratoga and Rensselaer Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul J. Elston, Mechanicville Corporation, c/o Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: July 21, 1986.

j. Competing Application: Project No. 6032-000. Date Filed January 23, 1982. Project No. 5799-001. Date Filed November 23, 1983.

k. Description of Project: The proposed project would consist of: (1) An existing dam in sections: A 147.5-foot-long, 15-foot-high auxiliary spillway; a 698.5-foot-long, 17-foot-high ogee-shaped spillway; a 120-foot-long, 17.3-foot-high waste gate structure and bulkhead; Bluff Island, 115 feet long; a 45-foot-long, 19-foot-high lock C-2 structure; a 525-foot-long, 19-foot-high permanent dike (shutting off the existing Niagara Mohawk Power Corporation's integral intake and powerhouse); (2) a second proposed 19-foot-high and 380-foot-long permanent dike in the existing tailrace; (3) an existing reservoir with a surface area of 320 acres, a storage capacity of 1,146 acre-feet with a normal water surface elevation of 47.0 feet msl; (4) a proposed integral intake structure and powerhouse containing three generating units having a total installed capacity of 12,628 kW; (5) a proposed 110.5-foot-long tailrace; (6) a proposed 2,400-foot-long, 115-kV transmission line; and (7) appurtenant facilities. The existing facilities are owned by the Niagara Mohawk Power Corporation. The existing lock and dam structure is owned by the New York Department of Transportation. The Applicant estimates the annual generation would be 58,941,000 kWh.

l. Purpose of Project: All project energy generated would be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

2 a. Type of Application: Major License Over 5MW.

b. Project No.: 9703-000.

c. Date Filed: December 27, 1985.

d. Applicant: South Glens Falls Corporation.

e. Name of Project: South Glens Falls Project.

f. Location: On the Hudson River, in Warren and Saratoga Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul J. Elston, South Glens Falls Corporation, c/o Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986-0440.

i. Comment Date: July 21, 1986.

j. Competing Application: Project No. 5461-000. Date Filed: October 8, 1981.

k. Description of Project: The proposed project would consist of: (1) An existing 518-foot-long, 9-foot-high ogee-shaped concrete gravity dam; (2) 5-foot-high flashboards; (3) an impoundment having a surface area of 190 acres, with a storage capacity of 1540 acre-feet and a normal water surface elevation of 269.1 feet m.s.l.; (4) a proposed intake structure; (5) two proposed 150-foot-long, 17-foot-diameter welded steel penstocks; (6) a proposed powerhouse containing two generating units with a total installed capacity of 21,000 kW; (7) a proposed 75-foot-long, 84-foot-wide tailrace channel; (8) a proposed 200-foot-long, 34.5-kV transmission line; and (9) appurtenant facilities. The existing dam and project facilities are owned by Finch, Pruyn & Co. and Niagara Mohawk Power Corporation. The Applicant estimates the average annual generation would be 62,100,000 kWh.

l. Purpose of Project: All project energy would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

3 a. Type of Application: Preliminary Permit.

b. Project No. 9991-000.

c. Date Filed: May 12, 1986.

d. Applicant: Nevada Irrigation District.

e. Name of Project: D-S Wolf Creek Project.

f. Location: Applicant's D-S Canal and Wolf Creek near the town of Grass Valley in Nevada County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James P. Chatigny, Interim Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, CA 95945, (916) 273-6185.

i. Comment Date: July 18, 1986.

j. Competing Application: Project No. 9792, Date Filed: December 30, 1985.

k. Description of Project: The proposed project would consist of: (1) An intake structure within the south

bank of the D–S Canal; (2) a 36-inch-diameter, 2,000-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 825 kW operating under a head of 220 feet and discharging into Wolf Creek; and (4) a 2,000 to 4,000-foot-long, 12-kV transmission lien will connect the powerhouse with an existing Pacific Gas & Electric Company (PG&E) line southwest of the project.

l. Purpose of Project: The project's estimated annual generation of 2.9 million kWh will be utilized by the Applicant and/or sold to PG&E.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

4 a. Type of Application: Amendment of License.

b. Project No: 2615–003.

c. Date Filed: December 30, 1985.

d. Applicants: Central Maine Power Company, Scott Paper Company, Milstar Manufacturing, and the Madison Paper Corporation and the Brassua Hydroelectric Limited Partnership.

e. Name of Project: Brassua Storage Project.

f. Location: On the Moose River in Somerset County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Allen J. Corson, P.O. Box 103, 6 Water Street, Waterville, Maine 04901, Telephone (207) 872–6624.

i. Contact Date: July 7, 1986.

j. Description of Project: On September 16, 1977, a minor license was issued to the Central Maine Power Company, the Milstar Manufacturing Corporation and the Kennebec River Pulp and Paper Company, Inc. to construct, operate and maintain the Brassua Storage Project No. 2615. Subsequently, by order issued June 14, 1978, the Commission approved the transfer of Kennebec River Pulp and Paper Company, Inc.'s interest in Project No. 2615 to the Madison Paper Corporation. It has now been proposed to transfer the license to the Owners of Brassua Dam and the Brassua Hydroelectric Limited Partnership (hereinafter referred to as the "Co-Transferees"). The Co-Transferees are an unincorporated association of domestic corporations (the Owners of Brassua Dam) and a private limited partnership organized under the laws of the State of Maine (Brassua Hydroelectric Limited Partnership). The purpose of the proposed transfer is to facilitate the expeditious development of hydroelectric generation capacity at the project. As stated in the application for amendment of license for the Brassua Dam filed simultaneously with the application for license transfer, the proposed development of hydroelectric generation capacity at the project will result in annual production of approximately 17 million kWh, thereby, reducing Maine's dependence on fossil fuels.

The Applicant's request that the license be amended to authorize the addition of: (1) A reinforced-concrete intake structure; (2) a 110-foot-long, 144-inch-diameter, penstock; (3) a 32-foot-high, 32-foot-wide and 60-foot-long, powerhouse; (4) a 3.4-MW generating unit; (5) a 40-foot-wide, 15-foot-deep and 60-foot-long tailrace; (6) a substation; (7) a ½-mile-long, 34.5-kV transmission line; and (8) appurtenant facilities.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9982–000.

c. Date Filed: April 24, 1986.

d. Applicants: Bridgeport Hydraulic Company.

e. Name of Project: Samuel P. Senior Reservoir Dam.

f. Location: On the Saugatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jack E. McGregor, 835 Main Street, P.O. Box 702, Bridgeport, CT 06601–2353, (203) 367–6621.

i. Comment Date: July 14, 1986.

j. Competing Application: Project No. 9608, Date Filed November 4, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing 110-foot-high and 990-foot-long concrete gravity dam with an exisitng spillway at elevation 280 feet msl; (2) a second existing 11-foot-high and 1160-foot-long earth dam with an existing spillway at elevation 225 feet msl; (3) a third existing 64-foot-high and 700-foot-long concrete gravity dam with an existing spillway at elevation 225 feet msl: (4) an existing 868-acre surface area reservoir with a storage capacity of 42,000 acre-feet with a maximum surface elevation of 280 feet msl; (5) a second existing 437-acre surface area reservoir with a storage capacity of 11,700 acre-feet with a maximum surface elevation of 225 feet msl; (6) an existing intake structure; (7) an existing 6-foot-4-inch-diameter tunnel approximately 9,100 feet long; (8) an existing 48-inch-diameter blow off and two 8-inch-diameter drains which discharge water into the Saugatuck River; (9) an existing 36-inch-diameter blow off that discharges into the Aspetuck River; (10) an existing 24-inch-diameter blow off that discharges into an 8-foot-diameter diversion conduct; (11) a proposed powerhouse to contain one turbine/generator unit with an installed capacity of 200 kW; (12) an existing three-phase, 13.8-kV transmission line approximately 1,000 feet long; and (13) appurtenant facilities. The estimated average annual energy produced by the project would be 1 million kWh operating under a net hydraulic head of 41 feet. The owner of the dam is Bridgeport Hydraulic Company.

l. Purpose of Project: Project power will be sold to either the Connecticut Light and Power Company or the United Illuminating Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

6 a. Type of Application: Amendment of License.

b. Project No: 1930–003.

c. Date Filed: November 12, 1985.

d. Applicant: Southern California Edison Company.

e. Name of Project: Democrat Dam.

f. Location: On the Kern River within the Sequoia National Forest in T. 27S., R.31E. and T.28S., R.31E, near Bakersfield in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Bury, Vice President, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1904.

i. Comment Date: July 14, 1986.

j. Description of Project: Applicant proposes to amend its license by raising its existing 58-foot-high concrete gravity dam 2 feet. The impounded surface area will increase from 25 acres to 27 acres and the gross storage capacity will increase 52 acre-feet from the existing 195 acre-feet. No additional capacity is planned in conjunction with this proposal.

k. This notice also consists of the following standard paragraphs: B and C.

7 a. Type of Application: Conduit Exemption.

b. Project No: 9700–000.
c. Date Filed: December 20, 1985.
d. Applicant: Irvine Ranch Water District.
e. Name of Project: Zone I Reservoir.
f. Location: On a conduit used to supply domestic and irrigation water to the Zone I Reservoir in Lot 242, Block 121 of Irvine's Subdivision in Orange County, California.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).
h. Contact Person: Mr. Arthur E. Bruington, General Manager, Irvine Ranch Water District. 18802 Bardeen Avenue, Irvine, CA 92715 (714) 833–1223.
i. Comment Date: July 14, 1986.
j. Description of Project: The proposed project would use the existing Irvine Ranch Water District Sand Canyon conduit and would consist of one generating unit having a capacity of 137 kW and an average annual generation of 1.06 GWh.
k. Purpose of Exemption: An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing.
l. Purpose of Project: Project power would be sold.
m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.
a. Type of Application: Amendment of License.
b. Project No: 2597–004.
c. Date Filed: July 9, 1984.
d. Applicant: Connecticut Light and Power Company.
e. Name of Project: Falls Village.
f. Location: Housatonic River in Litchfield County, Connecticut.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. J.F. Opeka, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, (203)665–5000.
i. Comment Date: July 14, 1986.
j. Description of Project: The project as licensed consists of: (1) A 300-foot-long, 14-foot-high concrete overflow dam; (2) a reservoir with a storage capacity of 440 acre-feet at normal water surface elevation 633.19 (U.S.G.S. datum); (3) three 10-foot-high by 5-foot-wide canal gates; (4) a 2,200-foot-long, 30-foot-wide, 15.5-foot-deep concrete canal; (5) an ice sluice; (6) three steel penstocks; (7) a powerhouse containing three generators with a total installed capacity of 9,000 kW; (8) two direct current exciter units; (9) the generator leads and six 6.6/69 kV transformers; and (10) appurtenant facilities.

The applicant proposes to amend the license by: (1) Installing a new 9-foot by 9-foot intake at the west side of the existing forebay; (2) a new 9-foot-diameter, 300-foot-long penstock; and (3) a new powerhouse containing a generating unit with a rated capacity of 6MW bringing the total installed capacity of the project to 15 MW. The applicant estimates a 50,800 MWh average annual energy production.
k. Purpose of Project: Project power would be utilized by the applicant.
l. This notice also consists of the following standard paragraphs: B, C, and D1.
9 a. Type of Application: License (5MW or Less).
b. Project No: 9761–000.
c. Date Filed: December 30, 1985.
d. Applicant: Michiana Hydro Electric Power Corporation.
e. Name of Project: Bainter Town.
f. Location: On the Elkhart River in Elkhart County, Indiana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Douglas A. Hunt, 915 Weber Square West, South Bend, IN 46617.
i. Comment Date: August 4, 1986.
j. Description of Project: The existing dam is owned by the Elkhart County Park Board. The proposed project would consist of: (1) A 130-foot-long, 5-foot-high rockfill and concrete diversion dam; (2) an existing reservoir with a surface area of 39.59 acres, with no storage capacity, at powerpool elevation of 803.3 feet m.s.l.; (3) an existing 50-foot-wide by 4,000-foot-long power-canal containing a gated intake structure; (4) an existing concrete and brick powerhouse containing a 200–kW generating unit with a design head of 9 feet and a hydraulic capacity of 310 cfs. The powerhouse and generating unit are proposed to be refurbished; (5) an existing transmission system, which is proposed to be up-graded, consisting of the 0.44-kV generator leads, the 0.44/12.5–vK, 225–kVA transformer, and the 200-foot-long, 12.5–kV transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 500,000 kWh.
k. Purpose of Project: The energy produced at the project would be sold to the Northern Indiana Public Service Company.
l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.
10 a. Type of Application: Amendment of License.
b. Project No.: 7186–010.
c. Date Filed: May 13, 1985.
d. Applicant: Missisquoi Associates.
e. Name of Project: Sheldon Springs Project.
f. Location: On the Missisquoi River in Franklin County, Vermont.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Ms. Amy Koch, Reid and Priest, 1111 19th Street, NW., Suite 1100, Washington, DC 20036, Phone: 202–828–0100.
i. Comment Date: July 14, 1986.
j. Description of Project: The licensed project consists of: (1) An existing concrete overflow dam 35.5 feet high and 283 feet long; (2) the existing 2-foot-high flashboards; (3) an impoundment having a surface area of 175 acres, a storage capacity of 750 acre-feet and a normal water surface elevation of 328 feet NGVD; (4) a new intake structure; and the following:

Powerhouse ±1: (5) An existing 6-foot-diameter steel penstock 470 feet long; (6) an existing powerhouse containing one generating unit with a capacity of 1,000 kW; (7) an existing tailrace 15 feet wide, 4 feet deep, and 50 feet long; (8) an existing transmission line;

Powerhouse ±2: (5) An existing 12-foot-diameter steel penstock 140 feet long; (6) an existing powerhouse, with 4 generating units, (3 existing, 1 new), having a total capacity of 3,300 kW; (7) an existing tailrace 30 feet wide, 6 feet deep and 100 feet long; (8) an existing transmission line;

Powerhouse ±3: (5) A new 13.5-foot-diameter steel penstock 1,900 feet long; (6) a new powerhouse containing 2 generating units having a total capacity of 17,800 kW; (7) a new tailrace 40 feet wide, 20 feet deep and 125 feet long; (8) a new 46–kV transmission line 1,200 feet long; (9) the existing switchyard; and (10) appurtenant facilities.

The proposed amendment would consist of the following: (1) The two generating units in Powerhouse ±3 would be increased from 17,800–kW to 20,500–kW; and (2) an additional 165–kW generating units would be installed at the dam.

The Licensee estimates that the annual average generation would increase from 67,500,000 kWh to 72,100,000 kWh.
k. Purpose of Project: All project power would be sold to Citizens Utilities.
l. This notice also consists of the following standard paragraphs: B, C, and D1.
11 a. Type of Application: Exemption (5 MW or Less).
b. Project No.: 9683–000.
c. Date Filed: December 13, 1985.
d. Applicant: Dunn & McCarthy, Inc.
e. Name of Project: Dunn & McCarthy.

f. Location: On the Owasco Outlet in Cayuga County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contract Person: Mr. David Allen Lower, President, Consolidated Hydroelectric Company, Inc., 8½ Syracuse Street, Baldwinsville, NY 13027, (315) 635–5933.

i. Comment Date: July 14, 1986.

j. Competing Application: Project No. 6962–001; Date Filed: December 13, 1984.

k. Description of Project: The proposed project would consist of: (1) An existing 9.5-foot-high, 100-foot-long stone and masonry dam; (2) a reservoir with a surface area of 1.2 acres, a net storage capacity of 4.5 acre-feet, and a normal water surface elevation of 650.0 feet m.s.l.; (3) an existing intake canal, 1,050 feet long; (4) an existing steel penstock with a diameter of 9.5 feet and a length of 140 feet; (5) an existing powerhouse containing a new generating unit with a capacity of 700 kW; (6) an existing transmission line, 100 feet long; (7) an existing 30-foot-wide, 500-foot-long tailrace; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 2,510,000 kWh. The existing dam is owned by Dunn & McCarthy, Inc., Auburn, New York.

l. Purposes of Project: Project power would be sold to the New York State Electric and Gas Company.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3a.

n. Purpose of Exemption: An exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the exemptee from permit or license applicants that would seek to take or develop the project.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9924–000.

c. Date Filed: March 3, 1986.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Nine Mile Feeder Canal.

f. Location: Nine Mile Feeder Canal in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred T. Samel; Trenton Falls Hydroelectric Company, P.O. Box 169, Prospect, NY 13435, (315) 894–3070.

i. Comment Date: July 31, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 125-foot-long concrete gravity dam; (2) a reservoir with a surface area of ¼ acre, no storage capacity, and a normal water surface elevation of 738.11 feet m.s.l.; (3) an intake structure; (4) a new 6-foot-diameter, 175-foot-long steel penstock; (5) a new concrete and masonry powerhouse containing one generating unit with a capacity of 190 kW; (6) a new 8-foot-wide, 18-foot-long concrete tailrace; (7) a new transmission line, 2,000 feet long; and (8) appurtenant facilities. The applicant estimates the average annual generation would be 993,760 kWh. The existing dam is owned by the New York State Department of Transportation, Waterford, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 18 months during which time the applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the applicant would decide whether to proceed with an application for FERC license. The applicant estimates that the cost of the studies under permit would be $49,500.

13 a. Type of Application: License (Over 5MW).

b. Project No.: 8813–001.

c. Date Filed: June 3, 1985.

d. Applicants: Indepdendence Electric Corporation.

e. Name of Project: Coffeeville Hydro Project.

f. Location: On the Tombigbee River near Coffeeville, Clarke and Choctaw Counties, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, President, Independence Electric Corporation, 1215 19th Street NW., Washington, DC 20036, (202) 429–1780.

i. Comment Date: July 14, 1986.

j. Competing Application: Project No. 8862–001, Date Filed May 21, 1985.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Coffeeville Lock and Dam and existing 1850-foot-long and 200-foot-wide diversion channel and would consist of: (1) A proposed reinforced concrete powerhouse which would be located on the north side of the river in the diversion channel, and which would contain two 13-MW generators for a total installed capacity of 26 MW; (2) a proposed 44-kV transmission line approximately 2 miles long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 96.7 GWh. All project energy would be sold to a local public utility.

l. This notice also consists of the following standard paragraphs: A4, B, and C.

14 a. Type of Application: Amendment of Exemption.

b. Project No.: 6492–002.

c. Date Filed: April 11, 1986.

d. Applicant: Harden Manufacturing Company.

e. Name of Project: Hardins Hydro-Power Project.

f. Location: On the South Fork-Catawba River in Gaston County, North Carolina.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. David R. LaFar, III, President and Treasurer, 312 West Third Ave., P.O. Box 459, Gastonia, NC 28053–0459, (704) 865–2391.

i. Comment Date: July 21, 1986.

j. Description of Project: The Hardins Hydro-Power Project No. 6492 as exempted from licensing consists of: (1) The existing masonry Hardin Dam approximately 267 feet long and 13.5 feet high; (2) an existing 77 acre reservoir having a storage capacity of 385 acre-feet at an elevation of 661 feet m.s.l. with; (3) 3-foot-high flash boards; (4) an existing masonry powerhouse approximately 50 feet by 50 feet having three existing flumes and containing a single turbine/generator unit with an existing capacity of 200 kW; (5) two existing tailraces; (6) an existing 30-foot-long 2.3-kV distribution line; and (7) appurtenant facilities. The average annual energy generation of the project is 1,000,000 kWh.

The Applicant proposed to amend its exemption by: (1) Increasing the total installed capacity to 720 kW by installing two additional turbine/generator units rated at 240 kW and 280 kW in the two remaining powerhouse flumes; and (2) increase the estimated average annual energy production to 4,500,000 kWh.

k. Purpose of Project: Project energy would be sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: B, C, and D3a.

15 a. Type of Application: Transfer of License.

b. Project No: 2832–005.

c. Date Filed: April 15, 1986.

d. Applicant: New York Irrigation District, Nampa-Meridian Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District—Licensee; Nampa-Meridian Irrigation Disrict, Boise-Kuna Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District—Transferees.

e. Name of Project: Lucky Peak Power Plant.

f. Location: On the Boise River, tributary to the Snake River, at the Corps of Engineer's Lucky Peak Dam, in Ada County, Idaho.

g. Filed PUrsuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Timothy J. Lindon, Arnold & Porter, 1200 New Hampshire Ave. NW., Washington, DC 20036 (202) 872–6659.

i. Comment Date: July 21, 1986.

j. Description of Transfer: On June 10, 1980, a major license was issued to the New York Irrigation District, the Nampa-Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District for the construction, operation, and maintenance of the Lucky Peak Power Plant Project No. 2832. It is proposed to transfer the license to the Nampa-Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District. Licensee has jointly and severally applied for the transfer of the New York Irrigation District's interest in the license to the transferee.

The transferees are irrigation districts, which are public agencies, organized under the laws of the State of Idaho or the State of Oregon, and qualified to do business in the State of Idaho.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license, as amended, and agrees to be bound thereby to the same extent as though it was the original license.

k. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application— Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may by filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protects or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to

provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 10, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–13416 Filed 6–12–86; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Fryingpan-Arkansas Project Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate adjustment for the Fryingpan-Arkansas Project.

SUMMARY: The power repayment study for the Fryingpan-Arkansas Project (Fry-Ark), based on historical data through FY 1984, shows that existing power rates are not adequate to meet repayment requirements. To meet those requirements, the rate for firm capacity is proposed to be increased as follows:

Class of power	Proposed rate (kW-mo.)	Existing rate (kW-mo.)
Firm capacity (kW)	$3.88	$3.11

Pursuant to Delegation Order No. 0204–33, the Federal Energy Regulatory Commission, in the Order issued June 24, 1982, docket No. EF–5061–000, confirmed and approved Rate Schedule FA–1 for capacity without energy marketed by the Western Area Power Administration's (Western) Fry-Ark Project. The rate was approved for the period ending July 1, 1986. Pursuant to Delegation Order No. 0204–108 (Order No. 0204–108), effective December 14, 1983 (48 FR 55664, December 14, 1983), and the "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations" (Procedures) at 10 CFR Part 903 (50 FR 37837, September 18, 1985), and in particular section 23, subsection b, the Deputy Secretary of Energy extended Rate Schedule FA–1 for a 1-year period (51 FR 11102, April 1, 1986).

The proposed rate increase for Fry-Ark power is needed due to a revision of the cost allocation and increased project costs. The proposed rate is $3.88 per kilowatt of contract rate of delivery per month for capacity without energy. The rate is based on the FY 1984 power repayment study. The costs have been allocated based upon two Fry-Ark generating units.

Following review and comment, the proposed rate or a revised proposed rate will be submitted to the Under Secretary of Energy for implementation on an interim basis, in accordance with Order No. 0204–108, as amended (51 FR 19744, May 30, 1986), and the Procedures, and then submitted to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

Date and locations: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end 90 days thereafter or 15 days after any written response to questions submitted during the comment period, whichever is later. It is anticipated that the proposed rate will go into effect with the April 1987 billing period.

A public information forum at which Western representatives will explain and answer questions about the proposed rate is scheduled for July 1, 1986, at 9:00 a.m., at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado.

A public comment forum at which all interested persons attending may make comments on the proposed power rate is scheduled for July 23, 1986, at 9:00 a.m., at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado.

Written comments on the proposed rare adjustment for Fry-Ark power must be received at the Loveland Area Office, P.O. Box 3700, Loveland, Colorado 80539, by the end of the consultation and

comment period to be assured of consideration.

Brochure available: A brochure describing the project, repayment study, and the proposed power rate adjustment will be distributed to Fry-Ark customers and other interested parties and will be available at the public information forum.

FOR FURTHER INFORMATION CONTACT: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, Phone: (303) 224–7201.

SUPPLEMENTARY INFORMATION: Western was established on December 21, 1977, pursuant to section 302 of Pub. L. 95–91, the Department of Energy Organization Act (DOE Act), dated August 4, 1977. The DOE Act transferred to the Secretary of Energy all the functions of the Secretary of the Interior with respect to, among other things, the power marketing functions of the Bureau of Reclamation including the construction, operation, and maintenance of transmission lines and attendant facilities. Western was established to administer those functions transferred from the Bureau of Reclamation.

Western's Loveland Area Office now markets power generated at 18 hydroelectric powerplants in Colorado and Wyoming to 56 customers in a 200,000-square-mile area in Colorado, Kansas, Nebraska, and Wyoming.

The Fry-Ark rate is being developed by Western pursuant to the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), and the Reclamation Act of 1902 (32 Stat. 388, 43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1194, and 1198, 43 U.S.C. 485h(c)) and the Fryingpan-Arkansas Project Acts (Pub. L. 87–590, 76 Stat. 399 (August 16, 1962), Pub. L. 93–493, 88 Stat. 1486 (October 27, 1974), Pub. L. 95–586, 92 Stat. 2485 (November 3, 1978)).

The Secretary of Energy, by Delegation Order No. 0204–108 (48 FR 55664, December 14, 1983), as amended (51 FR 19744, May 30, 1986), delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of Energy, the authority to confirm, approve, and place in effect such rates on an interim basis; and to the FERC, the authority to confirm, approve, and place in effect on a final basis, to remand, or disapprove those rates.

The Procedures establish the method for confirmation and approval on an interim basis by the Under Secretary of Energy for new, revised, or extended power and transmission rates and provide for opportunities for interested members of the public to participate in the development of such rates. These procedures supplement Order No. 0204–108 with respect to the activities of the Under Secretary and the power marketing administration.

Environmental compliance: In compliance with the National Environmental Policy Act of 1969 and the Department of Energy (DOE) Regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), as amended, Western normally prepares environmental assessments for proposed rate adjustments which exceed the rate of inflation in the period since the last adjustment.

Western will complete an environmental assessment of the proposed rate increase prior to its implementation. If the environmental assessment indicates the rate increase could result in significant impacts on the human environment, and environmental impact statement will be prepared.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on smal entities. In this instance, the rate adjustment for Fry-Ark relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for Fry-Ark power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193, (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, May 30, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86–13341 Filed 6–12–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OAR—Region 6—FRL–3031–7]

Air quality: Approvals and Extensions of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD–TX–672—General Electric Company: This permit, issued on January 10, 1986, authorized the construction of a cogeneration plant to be located on West Bay Road, approximately 1.5 miles east of Baytown, Chambers County, Texas.

2. PSD–TX–256M–1—United States Gypsum Company: Lime manufacturing plant located on Wald Road, approximately five miles south of New Braunfels, Comal County, Texas. PSD–TX–256M–1 modified PSD–TX–256 to authorize an increase in the maximum kiln production capacity from 600 to 850 tons per day with an increase in the limestone feed rate from 48.5 to 70 tons per hour, and a change in the NO_x emission rate from 75 to 77.2 pounds per hour. This modified permit was issued on February 5, 1986.

3. PSD–TX–630M–2—Amoco Production Company: Slaughter Gasoline Plant located approximatley four miles west of Sundown, Hockley County, Texas. PSD–TX–630M–2 modifies PSD–TX–630M–1 to authorize the installation of an auxiliary sweet natural gas fired 142 MM Btu/hr burner in the waste heat recovery section of the gas turbine exhaust. This modifed permit was issued on February 5, 1986.

4. PSD–TX–671—Shintech, Incorporated: This permit, issued on February 6, 1986, authorizes the construction of two railcar unloading stations for VCM at the existing chemical plant located at 5618 Highway 332 East, Freeport, Brazoria County, Texas.

5. PSD–TX–651—U.S. Brick, Incorporated: This permit, issued on February 13, 1986, authorizes the construction of separate stacks for each kiln and allows an increase in the sulfur content of the raw material at the existing brick manufacturing facility located at 500 NE. 14th Avenue, Mineral Wells, Palo Pinto County Texas.

6. PSD–TX–673—Farmland Industries, Incorporated: This permit, issued on February 18, 1986, authorizes the installation of three natural gas fired reciprocating engines at the existing gas processing plant located approximately seven miles southwest of Mertzon, Irion County, Texas.

7. PSD–TX–332M–2—Texas Eastman Company: Chemical process plant located on Kodak Boulevard, approximately five miles southeast of Longview, Harrison Conty, Texas. PSD–TX–332M–2 modified PSD–TX–332M–1 to authorize the installation of new hydrocracking unit and a new organic chemical manufacturing facility at the existing plant. This modified permit was issued on February 19, 1986.

8. PSD–TX–661—Texas Utilities Electric Company: This permit, issued on February 26, 1986, authorizes the construction of six natural gas and oil fired turbine units at the existing Morgan Creek Power Plant located on Highway 163, approximately four miles southwest of Colorado City, Mitchell County, Texas.

9. PSD–TX–662—Texas Utilities Electric Company: This permit, issued on February 26, 1986, authorizes the construction of four natural gas and oil fired turbine units at the existing DeCordova Steam Electric Station located on Walters Bend, approximately four miles southeast of Granbury, Hood County, Texas.

10. PSD–TX–663—Texas Utilities Electric Company: This permit, issued on February 26, 1986, authorizes the construction of five natural gas and oil fired turbine units at the existing Permian Basin Steam Electric Station located on Highway 80, approximately three miles west of Monahans, Ward County, Texas.

11. PSD–TX–605M–1—Capitol Cogeneration Company, Ltd.: Natural gas and oil fired congeneration facility at the Celanese Clear Lake plant located approximately eight miles east of Pasadena, Harris County, Texas. PSD–TX–605M–1 modified PSD–TX–605 to reflect the actually sampled particulate matter emissions rate during natural gas firing. This modified permit was issued on March 24, 1986.

12. PSD–TX–675—Sid Richardson Carbon and Gasoline Company: This permit, issued on March 27, 1986, authorizes the construction of a natural gas sweetening and dehydration plant at the existing Bass North Word Edwards facility located on Highway 318, approximately four miles southwest of Hallettsville, Lavaca County, Texas.

13. PSD–TX–370M–2—Guardian Industries Corporation: Glass manufacturing facility located on Highway 287, approximately 1.5 miles southeast of Corsicana, Navarro County, Texas. PSD–TX–370M–2 modifies PSD–TX–370M–1 to authorize an increase of the particulates and nitrogen oxides emissions to 25 pounds per hour (1.0 pound per ton) and 600 pounds per hour, respectively. This modified permit was issued on March 28, 1986.

14. PSD–TX–194M–2—Texas Cement Company: Portland Cement Plant located on FM Road 2770, approximately two miles southwest of Buda, Hays County, Texas. PSD–TX–194M–2 modifies PSD–TX–194M–1 to authorize an increase in the NO_x and TSP emission limitations, from 240 lb/hr to 600 lb/hr and 33.7 lb/hr to 57.7lb/hr, respectively, for the combined emissions from the 2 preheaters and the alkali bypass. The permit also authorizes the company to burn a coke/coal mixture as fuel for the cement kiln instead of coal only. This modified permit was issued on March 28, 1986.

15. PSD–LA–535—Borden Chemical: This permit, issued on March 28, 1986, authorizes the constuction of a combined cycle gas turbine cogeneration facility at the existing chemical plant located in Geismar, Ascension Parish, Louisiana.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD–TX–613—Basic Resources, Incorporated: This permit, issued on November 1, 1984, authorizes the construction of an in-situ lignite gasification facility to be located approximately three miles west of Tanglewood, Lee County, Texas. The company has postponed the start of construction due to economic conditions. The extension was granted on January 13, 1986, to a new expiration date of November 1, 1987.

2. PSD–TX–618—Tenneco Cogeneration Development (formerly Petro-Tex Chemical): This permit, issued on June 28, 1984, authorizes the construction of a cogeneration facility to be located at 8600 Park Place in Houston, Harris County, Texas. The company has postponed the start of construction due to financial considerations. The extension was granted on January 13, 1986, to a new expiration date of June 28, 1987.

3. PSD–NM–350—Southern Union Refining Company: This permit, issued on November 8, 1981, authorizes the modification of the existing petroleum refinery located on Highway 18, approximately five miles south of Lovington, Lea County, New Mexico. The company has postponed the start of construction due to the deterioration of economic conditions. The additional extension was granted on February 26, 1986, to a new expiration date of May 8, 1986.

4. PSD–NM–422—Bloomfield Refining Company: (formerly Plateau, Incorporated) This permit issued on June 11, 1982, authorizes the modification of the existing refinery located on Sullivan Road, approximately one mile southeast of Bloomfield, San Juan County, Texas. The company has postponed the start of construction due to the deterioration of economic conditions in the oil industry. The additional extension was granted on February 26, 1986, to a new expiration date of December 11, 1986.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extension is justified.

A notice of EPA's proposed action to extend these PSD permits was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals for sources in Texas and Louisiana and in the Tenth Circuit Court of Appeals for sources in New Mexico, within 60 days of June 13, 1986. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Dated: June 3, 1986.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 86-13387 Filed 6-12-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-10-FRL-3031-4]

Water pollution; Proposed General NPDES Permit for Concentrated Animal Feeding Operations in Idaho

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Rescheduling of public hearings and extension of the public comment period.

SUMMARY: On May 9, 1986, EPA provided notice of the proposed general National Pollutant Discharge Elimination System (NPDES) permit for concentrated animal feeding operations in Idaho. The public comment period and public hearings were also published. At the request of the Idaho Dairymen's Association, Inc. and due to extensive public interest, EPA is today providing notice that these hearings have been rescheduled, additional hearings will be added, and the public comment period has been extended.

DATES: Public hearings formerly scheduled for June 11 and 12, 1986, in Twin Falls and Boise, Idaho, respectively, have been cancelled. Hearings have been rescheduled on the following dates at the indicated locations:

Monday, July 14, 1986: University Inn—Best Western, 1516 Pullman Road, Moscow, Idaho

Tuesday, July 15, 1986: Holiday Inn, Convention Center, 3300 Vista Avenue, Boise, Idaho

Wednesday, July 16, 1986: Holiday Inn, 1350 Bluelakes Blvd. N., Twin Falls, Idaho

Thursday, July 17, 1986: Idaho State University, Film Theater, Student Union Bldg., 8th Avenue entrance, Pocatello, Idaho

All hearings are scheduled to begin at 1:00 p.m. and will extend to 5:00 p.m. Hearings will reconvene at 7:00 p.m. and continue until all persons have been heard.

Additionally, the public comment period has been extended. Written comments on the proposed general permit may be submitted to the Seattle address given below by Ausut 1, 1986.

ADDRESS: Send comments to Karen Harder, U.S. Environmental Protection Agency, Water Permits and Compliance Branch, M/S 521, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Karen Harder at the Seattle address above or by telephone at (206) 442-1669 for FTS 399-1669.

Dated: June 2, 1986.

Robert S. Burd,

Director, Water Division.

[FR Doc. 86-13389 Filed 6-12-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36110; FRL-3032-3]

Pesticides; Strychnine; Notice of Hearing To Reconsider Registration Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearing.

SUMMARY: This notice announces a hearing to reconsider the cancellation of registration of strychnine for controlling skunks to suppress rabies. The March 1972 cancellation was based on strychnine's potential adverse effects on nontarget species, including endangered species, and the lack of reliable evidence on the benefits of predator control.

The Montana Department of Livestock (Montana) and the Wyoming Department of Agriculture (Wyoming) have submitted to EPA applications to register strychnine egg baits under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use to suppress the incidence and spread of rabies by killing skunks in areas where rabid animals have been found. EPA finds substantial new evidence in its review of the proposed use pattern and other evidence submitted with the applications to warrant a hearing for modification or reversal of the Cancellation Order.

DATE: Notices indicating an intention to participate in the hearing must be filed by July 14, 1986.

Procedures for submitting a notice of intent to participate in the hearing are explained in Unit IV of this notice. The Agency will subsequently publish a notice in the **Federal Register** announcing the date on which the Agency will begin to receive testimony and exhibits for admission into the evidentiary record.

ADDRESSES: Requests to participate in the adjudicatory hearing, identified by the document control number [OPP-36110], must be addressed to: Ms. Bessie Hammiel, Hearing Clerk (A-110), Room 3708, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

All published reports, letters, and other documents cited in this notice, will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency recommends that persons wishing to review the documents contact Ms. Frances Mann (703-557-3262), in advance, to schedule a time to view the available material.

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Washington, D.C. 20460

Office location and telephone number: Room 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2600).

SUPPLEMENTARY INFORMATION: This notice is arranged into four units. Unit I discusses the regulatory history of predator control uses of strychnine and provides a chronology of past actions. Unit II describes the applications submitted by the States of Montana and Wyoming. Unit III describes the basis for the Agency's finding that substantial new evidence may exist which warrants reconsideration of the 1972 cancellation and suspension of the predator uses of strychnine. Unit IV discusses certain procedural matters concerning the hearing.

I. Background

A. 1972 Cancellation and Suspension Order

On March 9, 1972, the Agency issued PR Notices 72-2 and 72-3, published in the **Federal Register** of March 18, 1972 (37 FR 5718), announcing an Order cancelling and suspending the registrations of products for predator control containing strychnine, as well as sodium cyanide, 1080 (sodium fluoroacetate) and thallium sulfate—three other compounds used as predacides. The order was not contested, nor was judicial review of the order sought. Accordingly, the order became final after 30 days.

This action was based, in part, on the findings of a special committee chaired by Dr. Stanley A. Cain, which the U.S. Department of the Interior (USDI) and the President's Council on Environmental Quality had

commissioned to study the use of chemical toxicants for predator control. (This report will subsequently be referred to as the Cain Report.) The committee's findings dealt at length with the effects of the use of sodium cyanide, strychnine, and 1080 for predator control. The report pointed out the extreme toxicity of these compounds through primary and secondary poisoning, their nonselectivity, and their potential impact on the environment.

Neither the Cain Report nor the EPA (as reflected in PR Notice 72–2) appeared to have devoted a great deal of attention to the control of rabies vectors. The Agency was silent on the issue in its decision document. The Cain Report devoted about two of 200 pages to the subject. The rest of this report concentrated on the use of predacides, or their alternatives, to control predators of livestock. The Report did comment on the ability of poisons and traps to control reservoir populations of animals, such as skunks, and thereby terminate rabies epizootics or reduce the danger to humans and domestic livestock.

In 1971, the Cain Report (p. 105) reported that in most states there was little or no current research to elucidate the epidemiology of rabies. The states of New York and Illinois were exceptions to this pattern. Both had intensive and costly programs of animal killing, but also had studied the results of their control efforts. In New York, where wild animal control (foxes) was initiated *before* a rabies outbreak began, they reported a lessened incidence of rabies for several years in some areas. In Illinois, where wild animal control (striped skunk) was initiated *after* a rabies outbreak began (which was the usual pattern in most states), the benefits were negligible.

The Cain Report (p. 106) also cited a 1971 draft report by the National Academy of Sciences, which recommended:

> Abolish persistent trapping or poisoning campaigns for the purpose of rabies control. No evidence exists that these costly and politically attractive programs produce either a reduction in wildlife reservoirs or in rabies. The money can be better spent on research, vaccination, compensation to stockmen for losses and on education on warning the public.
>
> Emphasize control in high contact areas (picnic grounds, camps, suburban areas, etc.) by removal of particular animals, by elimination of shelter and of food, and by public warnings.

The Cain Report (p. 106) concluded that ". . . the traditional effort to control rabies by killing animals is an exercise in futility . . ." It recommended that money being then spent for management of rabies should be spent in research "to breach the apparent impasse in methodology of rabies control."

As indicated above, the 1972 Cancellation Order, itself, makes no mention of the use of strychnine as a method to control skunks and reduce the spread of rabies, though registrations for such a use existed. The only pests mentioned were coyotes, foxes, badgers, and wolves. The use pattern described for strychnine was that of dropping meat, lard, or tallow baits along animal trails and near non-game carcasses. The Order was especially concerned about the "unattended and unsupervised use of poisons over large areas of land".

In discussing benefits, the Order only dealt with the reduction of livestock (especially sheep) and poultry losses. In weighing the hazards and benefits of predator control agents, the Administrator said,

> No apparent circumstances exist to counterbalance this distinct hazard and suggest that the possibility of irremediable loss is outweighed by the harm that might occur from their nonavailability during a period of suspension. The situation might well be different were the removal of these poisons from the market likely to affect human health or the supply of a staple food stuff; or were there no apparent alternatives available, the balance might be differently struck. This, however, is not true.

The Administrator concluded that these predator control uses, which offered only ill-defined and speculative benefits, presented an imminent hazard to the public. Therefore, he cancelled and suspended registrations with these uses.

In summary, although EPA's 1972 Cancellation Order applied to strychnine products used to control *both* predators of livestock and vectors of rabies (including skunks), the Agency's rationale within the order, itself, focused exclusively on the risks and benefits of strychnine's use to control livestock predators. The only discussion of either the risks or benefits of using strychnine to control vectors of rabies appeared in a few pages of the 200-page Cain Report, which the Agency referenced to support its order banning all predator uses of strychnine.

B. Legal Background

Title 40, Part 164, Subpart D—Rules of Practice for Applications Under sections 3 and 18 to Modify or Cancel Suspension Order, states that any application under section 3 of FIFRA to allow use of a pesticide at a site and on a pest for which registration has been finally cancelled constitutes a petition for reconsideration of the previous cancellation order. (40 CFR 164.130). The regulations require the Administrator to review the application and supporting data to determine whether reconsideration is warranted. Specifically, the Administrator must determine whether:

1. The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination.

2. Such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

If substantial new evidence is found to exist, the regulations, 40 CFR 164.131, require that a Federal Register notice be published setting forth this determination and briefly describing the basis for the determination. The notice must also announce a formal public hearing to review the evidence and to determine whether to modify or reverse the prior order. The notice must include a schedule for the hearing process. The burden of proof rests with the applicant for registration.

Section 164.133 allows the Administrator to waive the hearing if he makes the following findings:

a. The pesticide use will not pose a human health hazard and is necessary to prevent an unacceptable risk to human health or to fish and wildlife populations.

b. There is no other feasible solution to such risk.

c. The time available is insufficient to permit convening a hearing.

d. The public interest requires the granting of the requested use as soon as possible.

C. Past Emergency Exemptions

Section 18 of FIFRA allows the Administrator of EPA to exempt any Federal or State agency from any provision of the Act if he determines that emergency conditions exist that require such an exemption. Regulations have been promulgated which specify the criteria for determining whether an emergency condition exists. (40 CFR Part 166).

Montana and Wyoming have requested and received emergency exemptions for the use of strychnine to control rabid skunks since 1973. Montana has been authorized this use every year since 1973, and Wyoming has received exemptions in six of those years. The decision to grant emergency exemptions for this use of strychnine in

the past was based on the Agency's finding that emergency conditions existed and that the Subpart D criteria allowing for emergency waiver of a hearing, 40 CFR 164.133, had been met.

However, in reviewing the emergency exemption requests in 1985, the Agency determined that it had misinterpreted the Subpart D regulations and that, prior to even considering whether or not the hearing could be waived, a determination had to be made that substantial new evidence exists which may warrant a reconsideration of the prior cancellation order.

The Agency was unable to make such a determination regarding the emergency exemption requests and consequently published a notice in the **Federal Register** of May 17, 1985 (50 FR 20600) of its intent to deny the requests. Interested persons were invited to submit comments and any information which could be considered to constitute substantial new information.

In response to this notice and subsequent conversations with EPA personnel, both Montana and Wyoming submitted additional information that the Agency determined to be substantial. As a result of this determination, as well as the finding that emergency conditions existed with respect to rabid skunks and that the criteria necessary for waiving the Subpart D hearing had been met, the Agency granted emergency exemptions to Montana and Wyoming on November 6, 1985 (50 FR 48835).

II. Applications for Registration

On March 5, 1975, Montana submitted an application (EPA File Symbol 35975–R) to register strychnine to control skunks in Montana where rabies posed a potential health threat. On October 15, 1985, Wyoming submitted an application (EPA File Symbol 35978–T) for essentially the same use pattern. On October 23, 1985, Montana submitted a second application (EPA File Symbol 35975–E) to register strychnine for this use. It is these two applications that will be addressed in proceedings to reconsider the 1972 Cancellation Order and that are summarized below.

1. The purpose of these registrations would be to suppress the spread of rabies to humans and domestic animals. This aim would be accomplished by reducing local populations of skunks, which are the primary vectors of rabies in these two states.

2. Strychnine baits would be used only by, or under the direct supervision of, Federal, State, or local government employees who have been specifically trained and certified for control of animals that may transmit disease to humans or other susceptible animals.

3. Strychnine baits could only be placed within a five-mile radius of the point at which a laboratory-confirmed rabid animal was collected.

4. The maximum number of eggs that could be placed within this five-mile radius of a laboratory-confirmed rabid animal would be 1,200. The maximum number of eggs that could be placed within any one square mile is 150. Only the EPA could authorize placement of eggs in a larger area or authorize placement of additional eggs.

5. The only bait carrier for the strychnine would be eggs. No lard or tallow baits would be used.

6. Baits could only be stored in a dry, locked place inaccessible to children, pets, and domestic animals.

7. All strychnine egg baits and bait containers used for field distribution would be marked externally in three locations with the word "Poison" in red ink. In addition, each egg would be injected with a green food dye.

8. Elevated warning signs approved by Montana or Wyoming would be placed at entry points to premises where strychnine egg baits would be used.

9. Written permission would be secured from the landowner, lessee, or person in charge and responsible for the use of the land before any strychnine egg baits would be placed.

10. Before any baits could be placed near a town, the county sheriff, the local game and fish warden, the county agricultural extension agent, the weed and pest control supervisor, and the chief of police would be notified.

11. When baits are to be placed close to human residences, the public would be notified through the news media prior to the placement.

12. Baits would not be placed within one mile of a prairie dog town, unless a pre-control survey, conducted in accordance with approved techniques of the Office of Endangered Species, USDI, indicates that black-footed ferrets are not present. Baits would also not be placed within one mile of any site where the presence of a black-footed ferret has been confirmed within the last 5 years.

13. Baits would not be placed within 100 feet of water wells, ponds, and streams, or within 100 yards of human habitation.

14. The maximum number of strychnine egg baits that can be placed at any one location would be two. The only permissible placement locations would be near the entrance to skunk dens or other areas commonly occupied by skunks, such as abandoned buildings, junk piles, road culverts, haystacks, garbage dumps, and rock piles.

15. All bait locations would be marked with appropriate flagging to ensure that eggs are not overlooked during monitoring and to enhance recovery of unconsumed baits.

16. All baiting sites would be monitored at least once a week. If strychnine egg baits were missing and no carcass could be found at the bait site, a search would be made and a written record kept of the specific area searched.

17. Egg baits could not be left in a treatment area more than 30 days after the discovery of a confirmed rabid skunk.

18. All uneaten and partially eaten baits and their containers would be destroyed by burning or placing in a hole or trench 18 inches deep. Animals killed by baits would be burned or buried in remote locations at a safe distance from human habitation and water supplies.

19. Field records would be maintained by the project supervisor and would contain the following information:

a. The name of the person submitting the confirmed rabid animal.

b. The laboratory number of the confirmed animal.

c. The location of each egg bait placed.

d. The date of each egg bait placement.

e. The dates when each egg bait placement is monitored.

f. The number of egg baits missing and/or replaced during monitoring.

g. The number of target and nontarget animals taken with strychnine egg baits.

h. The number and location of each warning sign placed.

i. Any accidents involving strychnine egg baits.

j. The signature of the project supervisor.

20. Written reports would be submitted to the appropriate EPA personnel providing information requested by them.

III. Basis of the Decision to Hold Subpart D Hearings

As indicated in Unit I.B—*Legal Background*, the applications by Montana and Wyoming to control skunks to suppress the incidence and spread of rabies constitute petitions for reconsideration of the 1972 Cancellation Order. Therefore, the Agency must review the data submitted with these applications to determine (1) if there is substantial new evidence that was not available to the Administrator at the time of the 1972 Order and (2) if these data could have been discovered at that time. The evidence presented by

Montana and Wyoming is summarized and discussed below.

A. Increased Rabies Problem

Montana and Wyoming submitted substantial new evidence regarding the increased rabies problems in their states. Between 1964 and 1981, Montana has logged a total of 552 cases of rabies, 500 (90.6 percent) of which involved skunks. The total number of positive cases of skunk rabies is given in the following table.

NUMBER OF POSITIVE SKUNK RABIES, CASES IN MONTANA FROM 1964 TO 1981, IN 3-YEAR INTERVALS

3-year interval	Number of positive cases
1964 to 1966	22
1967 to 1969	14
1970 to 1972	6
1973 to 1975	226
1976 to 1978	126
1979 to 1981	106
Total	500

These data show that after 1972, the year of the Cancellation Order, there was a dramatic increase in the observed incidence of skunk rabies in Montana and that post-1972 cases of skunk rabies have remained high in the years following 1972, in comparison to 1964–1972 levels.

In 1985, when strychnine was unavailable for skunk control during major portions of the year (May-October for Montana and January-October for Wyoming), both Montana and Wyoming showed dramatic increases in the incidence of rabies. As of October 1985, 131 persons in Montana have been required to undergo medical treatment for rabies exposure. The number for all of 1984, when strychnine was available, was 62. In the 3-month period of August-October, there were 48 confirmed cases of rabies in wild and domestic animals for 1985 and 23 cases for 1984. In Wyoming, the incidence of rabies in skunks in Johnson, Sheridan, and Campbell Counties has increased recently. In these three counties, there were 29 cases of rabies in skunks as of October 1985. During the previous year there were no cases.

B. Efficacy of Strychnine

Montana and Wyoming submitted substantial new evidence in three areas regarding the use of strychnine to kill skunks and to suppress or limit rabies: (1) The selectivity of strychine egg baits in killing skunks, (2) the efficacy of strychnine pellets in rabies suppression, and (3) the efficacy of strychnine egg baits in rabies suppression.

1. Selectivity of Strychnine Egg Baits.

Both Montana and Wyoming have submitted much data regarding the selectivity of using egg baits to kill skunks. Skunks comprise the vast majority of all animals found to have been taken by strychnine eggs for many individual counties. For example, Wyoming reported that, in 1975 and 1980, respectively, 89 percent and 83 percent of all animals found dead because of exposure to egg baits in Campbell County were skunks and that, for the same two years, 96 percent and 96 percent of all animals found dead from egg baits in Crook County were skunks.

The above information should be qualified by the fact that a majority of all eggs placed are never recovered and that skunks are easier to find than other animals since they usually scent before dying. For this reason, the reported selectivity, as indicated by the distribution of target and nontarget animals recovered, may be higher than the actual selectivity.

2. Efficacy of Strychnine Pellets in Rabies Suppression

The applicants submitted a series of papers (Gurba, 1974; Gunson, *et al*, 1978; Rosatte, *et al*, 1983; Rosatte, 1984) reporting on efforts in Alberta, Canada, to stop the westward spread of rabies from the Province of Saskatchewan to Alberta by establishing an 18-by-380-mile Border Population Reduction Zone (BPRZ) along the eastern border of Alberta. Intensive efforts were made to reduce skunk populations by distributing stychnine-terated pellets and employing several non-chemical methods (shooting, gassing, trapping). Alberta hoped that the reduction of skunk populations would slow the spread and lower the incidence of rabies in their province.

The success of this program was studied in several ways. Gurba (1974) reported that skunk populations were reduced by an average of 40 percent in the BPRZ during the 3-year program. The incidences of rabies in skunks collected in a surveillance program in 1972 were 36.8 percent on the Saskatchewan side of the BPRZ, 3.4 percent within the BPRZ, and less than 1 percent in the remainder of Alberta.

Comparing the proportions of "suspect" skunks submitted to laboratories for analysis, Gunson, *et. al.* (1978) reported that the incidence of rabid animals in Alberta was consistently much lower than in Saskatchewan. (A "suspect" skunk is one that is thought may have rabies.) During this period, 27.9 to 65.7 percent of the "suspect" skunks analyzed in Saskatchewan were found to have rabies. In Alberta, 0 to 7.3 percent of "suspect" skunks were positive during the same period of time. Although skunk control efforts were relaxed during the period from 1974–1979, no rabid animals were diagnosed in the BPRZ from 1979 through November of 1983 (Rosatte, *et. al.*, 1983).

Subsequent to the BPRZ program, several smaller skunk rabies control programs have been conducted in Alberta (Rosatte, *et al.*, 1983). These programs have been run in Warner, Forty-Mile, and Newell Counties. As these counties are located in the southern part of the province, their skunk rabies problems might be the result of spread of the epizootic from Montana. As of late 1983, Rosatte, *et al.* (1983) reported dramatic reductions in incidences of skunk rabies following vector control programs in Forty-Mile and Newell Counties, but not in Warner County.

3. Efficacy of Strychnine Egg Baits in Rabies Suppression

According to records kept by the states under past section 18 exemptions, reports of rabies in the vicinity of treated areas is significantly reduced after treatment, and in some documented cases there has been no reported recurrence in 11 years. Wyoming submitted detailed accounts on the use of strychnine eggs in their state in 1974. These accounts are summarized by location.

a. *Gillette, Campbell County* (9/23–10/22/74). Four hundred seventy eight eggs were placed within a three-mile radius of location where a rabid skunk was found on Hines Ranch. Three hundred seventy eight eggs were missing. Wildlife carcasses found included 50 skunks, one raccoon, and one red fox. Carcasses were found for 14 percent of all eggs not recovered. Wyoming states that there have been no laboratory-confirmed cases of rabies in this area for the past 11 years.

b. *Dayton, Sheridan County* (9/3–9/7/74). Due to the occurrence of a rabid skunk in a populated area, eggs were placed at dusk and retrieved at dawn. Residents were advised to confine pets at night. Four hundred twelve baits were placed. Three hundred thirty-one were recovered and 81 were missing. Twenty two dead skunks were found plus one raccoon. Carcasses were found for 28 percent of the eggs missing. Six additional skunks were shot in the area. Wyoming states that there have been no

laboratory-confirmed cases of rabies in this immediate area for the past 11 years.

c. *Hulett, Crook County* (9/7–9/30/74). One hundred forty-six eggs were placed. Of these, 17 were recovered and 129 were missing. Ten skunks, one raccoon, and one red fox were found. Six additional skunks were shot by ranchers during this period. Carcasses were found for only 9 percent of the missing eggs. Wyoming states that there have been no laboratory-confirmed cases of rabies in this immediate area in the past 11 years.

Since 1972, state experts claim to have discovered ways to enhance the efficacy of strychnine for control of rabies. Unlike the pre-1972 use pattern, strychnine lard baits are not used because they are not considered as selective as egg baits. Moreover, sites of application since the 1972 decision have been restricted to those sites where skunks are most likely to be encountered. Finally, effectiveness of the treatment should be enhanced by the requirement that sites treated be limited to those in which a case of rabies has been confirmed.

C. Hazard to Nontarget Species

The use pattern currently proposed is more restrictive than that cancelled as a result of the 1972 decision, and therefore, the hazards to nontarget species may be reduced, relative to those existing 14 years ago.

In 1972, EPA lacked statutory authority to restrict the use of pesticides to certified applicators. Since that time, Congress has amended FIFRA to allow classification of more hazardous pesticides for restricted use. Such classification allows use only by, or under the direct supervision of, certified applicators. In contrast to the indiscriminate baiting cited in the cancellation decision, the Agency believes that the certified applicators (Federal, State, or local government employees that have been specifically trained in controlling animal disease vectors and who would supervise this product's use) would be more apt to follow labeling directions and restrictions. Such adherence to labeling would be likely to reduce exposure to nontarget animals. Limitations on the size of treated areas, the number of baits permitted, and the duration of exposure all should lower the risk to nontarget species, overcoming some of the concerns raised in the cancellation decision regarding indiscriminate baiting over wide, unpoliced areas.

In addition, the States have made claims, based on their expert opinions, that *egg* baits are more selective than *lard* baits for skunks and that selectivity can be enhanced by careful placement of the baits. Both types of baits were allowed in 1972 but only egg baits are being sought here. Although these contentions are not substantiated by empirical data, EPA believes that they may also contribute to a reduction of risks to nontarget animals.

D. Efficacy of Alternatives

Although the Cain Report did not discuss in detail the alternatives to strychnine for control of rabies vectors, a number of methods have been used in the past. The alternatives to the proposed method include gas cartridges, trapping and shooting skunks, and quarantining and vaccinating domestic animals. For reasons outlined below, these methods, by themselves, would appear to be unduly costly and inefficient in situations were strychnine-treated egg baits could be used. However, the Agency has not examined detailed cost comparisons for any of the control methods and would welcome any such comparative data, if available.

The only pesticide products registered to kill skunks are gas cartridges. These are placed in skunk dens, where the gases generated by ignited cartridges asphyxiate the animals. Gas cartridges have three problems. They will only work in an enclosed space, i.e., the den. Therefore, they could not be used effectively in junk piles, haystacks, garbage dumps, and rock piles, which are common skunk habitats and likely sites for control. Secondly, burning gas cartridges can ignite other combustible materials. Consequently, they could not be used inside of buildings or haystacks. Thirdly, one must be able to locate the den and exercise control when the animals are present. For all these reasons, the usefulness of gas cartridges for skunk control is rather limited.

Trapping skunks has special problems of its own. According to summary reports, anecdotal accounts and opinions of state personnel, traps frequently take nontarget wildlife and domestic animals. Traps are more costly to use than strychnine egg baits. In addition, a trapped, possibly rabid, live animal can pose additional risk to humans and pets.

Hunting skunks is very selective. However, discharging firearms in populated areas will often not be legal or possible. In addition, because the skunk is a nocturnal animal, shooting is difficult and inefficient as a primary means of population reduction.

Prophylactic vaccination is effective for pets but too expensive for livestock (other than valuable breeding stock) and people, except those in high risk situations (such as veterinarians and vector control personnel). Post exposure vaccine is not acceptable to most people as the primary defense against rabies because of its expense and the pain and trauma which accompany it. Vaccination of wildlife is not technically feasible at the present time.

Quarantining of potentially exposed domestic animals is currently required in some states like Montana but is not required in other states such as Wyoming. The Agency has little specific information in its files about the efficacy of quarantining in suppressing the spread of rabies.

Because of the lack of detailed studies available in 172 and at present, the EPA is unable to determine if the effectiveness, cost, availability, or hazards of alternative methods for controlling rabies vectors and suppressing rabies has changed since 1972. Therefore, while EPA cannot say that the evidence concerning the altenative methods of predator control is "new", as required under 40 CFR 164.131, this information does lend further support to the Agency's conclusion, explained below, to hold a hearing based on a finding that there is substantial new evidence which warrants reconsideration of the 1972 decision to cancel the use of strychnine for rabies control.

E. Conclusions

The Agency has reviewed the information submitted in support of the Montana and Wyoming applications and the requests for emergency exemptions described above, much of which was gathered since 1972. As required by 40 CFR 164.131, the Agency has determined that the applicants have submitted substantial new evidence, when compared to the 1972 data base. Further, such evidence would not have been available to the Administrator in 1972. Therefore, the Montana and Wyoming applications are supported by substantial new evidence, which warrants reconsideration of the prior order canceling and suspending the use of strychnine for the control of skunks.

A final Agency decision modifying or reversing the March 1972 Order would not, by itself, constitute registration of strychnine to kill skunks. A registration issued under section 3 or 24(c) of FIFRA would have to be granted. Such regulatory actions could only authorize use of strychnine to the extent allowed by the Agency's final decision in the Subpart D proceeding initiated by this Notice.

Currently, use of strychnine to control skunks to suppress rabies is authorized

in the States of Montana and Wyoming under the provisions of section 18 of FIFRA. These exemptions expire on November 6, 1986. EPA would consider issuing another emergency exemption if, by the expiration date, strychnine has not been registered for this use, the criteria in § 14.133 are met, an emergency condition is deemed to exist, and the states have met their commitment to generate section 3 data in a timely fashion.

IV. Procedural Matters

In view of the findings discussed in Unit III, a hearing will be held to reconsider the 1972 order. This Unit describes the procedures for requesting to participate in the hearing and the schedule and procedures for conduct of the hearing. This unit also identifies the offices responsible for making the Agency's decision in this matter and explains the *ex parte* rules that govern the process.

A. Procedure for Requesting to Participate in the Proceedings

Any interested person who wishes to participate in this proceeding either as a party or as an *amicus curiae* shall submit a Notice of Intent to Participate to the Hearing Clerk on or before July 14, 1986. An *amicus curiae* is a person whose role is limited to filing written briefs. An *amicus curiae* is not a party, and thus would not be entitled to obtain judicial review.

The Notice shall identify the person (individual or organization) and his representative, if any. The Notice of Intent to Participate shall also provide an address at which documents in the proceeding can be served. The Notice of Intent to Participate shall indicate whether the person wishes to participate as a party or as an *amicus curiae*.

Notices of Intent to Participate must be submitted to: Ms. Bessie Hammiel, Hearing Clerk (A–110), Rm. 3708, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Any person who fails to submit a Notice of Intent to Participate in the proceeding within the specified time period shall not be allowed to participate in the proceeding unless he shows good cause why he should be admitted.

Applicants and other interested parties who might be affected by a decision to modify or reverse the 1972 order should be aware that participation in the hearing initiated by this notice may be their sole opportunity to present evidence and/or testimony concerning the sue of strychnine to control skunks prior to final Agency action. Moreover, judicial review under FIFRA section 16(b) of any action concerning the use of strychnine which is taken by the Administrator at the conclusion of this Subpart D proceeding can only be obtained by a person who has been "a party to the proceedings. . . ."

Each person requesting to participate in this proceeding as a party shall file with the Hearing Clerk a Statement of Position. This statement must be part of the Notice of Intent to Participate and shall contain a written response describing the person's position and interest with respect to the issues identified in this Notice. Specificially, the hearing shall consider the following issues:

1. Incidence of rabies. Whether available data demonstrate that rabies is spreading or that the incidence of rabies is increasing since 1972:
   a. For humans.
   b. For domestic animal species.
   c. For skunks.
   d. For wildlife species.

Examples of useful data could include comparisions before and after the 1972 Cancellation Order of the numbers of counties in states where rabies has been found, the number of skunks that have been confirmed through laboratory examination to be rabid, the number of cases of rabies in humans and domestic animals, and the numbers of deaths in humans and domestic animals attributable to skunk rabies. These data should include a reference to the extent of treatment, if any, with strychnine.

2. Efficacy of strychnine egg baits. Whether the use of strychnine eggs baits is effective:
   a. In killing skunks (e.g., number of skunks killed per egg placed).
   b. In reducing the incidence of transmission of rabies from skunks to humans and domestic animals (e.g., a comparison of human and domestic animals rabies cases before and after treatment in treatment and control areas).

3. Efficacy of alternative control methods. Whether the use of alternative control methods are effective in:
   a. Killing skunks (e.g., number of skunks killed per trap set).
   b. Ruducing the incidence of transmission of rabies from skunks to humans and domestic animals (e.g., a comparison of human and domestic animals rabies cases before and after treatment in treatment and control areas).

4. Efficacy of vector suppression (by any means) in reducing the spread of rabies.

5. costs of control methods. To determine:
   a. Annual costs of strychnine egg bait control programs per rabid skunk killed.
   b. Annual costs of alternative control programs per rabid skunk killed. Alternatives include prophylactic vaccinations for pets and livestock, gassing, trapping, and shooting skunks.

6. Benefits derived from control methods. To determine the relationship between rabid skunks killed and transmission of rabies to humans, domestic pets, and livestock.

7. Environmental safety of control methods. To determine:
   a. Number and type of nontarget organisms taken with egg baits and other methods of control.
   b. Amount of secondary poisoning with baits.
   c. Fate of baits that are presently unaccounted for. Data could include acute primary and secondary toxicity to nontarget species, selectivity, and likelihood of exposure.

8. Human safety of control methods. To determine:
   a. Any accidents involving stychnine egg baits.
   b. Public education programs aimed at reducing rabies transmission.

9. Advances in rabies control and vaccinations. To determine:
   a. Advances in prophylactic vaccinations for domestic pets and animals, including costs.
   b. Advances in human post-exposure vaccines.

If the person is an applicant, the Statement of Position shall also contain the file symbol assigned by EPA to his application, a copy of his proposed product labeling (including all labels, technical bulletins, text of warning signs, etc.), and a description of the propsoed use. (40 CFR 164.24). The Statement of Position shall be submitted to the address above and served on all parties.

B. Procedures and Schedule for the Hearing and the Decisions of the Administrative Law Judge and the Administrator

This hearing will be conducted under the provisions of the Administrative Procedures Act governing formal adjudications, under EPA's rules of practice governing hearings (see 40 CFR Part 164, Subpart D), and under the procedures established in this notice.

The hearing will be conducted by an EPA Administrative Law Judge (ALJ), who will preside over the presentation of sworn testimony and oral cross-examination and who will generally supervise the proceeding. During the hearing, the applicants will have the burden of proof with respect to the relevant issues, namely that (1) substantial new evidence exists and (2)

such evidence requires reversal or modification of the existing cancellation or suspension order. (40 CFR 164.132(a)).

At the close of the hearing, the parties will have an opportunity to present briefs to the ALJ, who in turn will prepare an Initial Decision containing findings of facts and conclusions of law. The Initial Decision must specifically determine (1) whether substantial new evidence exists and if so, (2) whether it requires reversal or modifications of the 1972 order, to permit the use of strychnine eggs to kill skunks for the purpose of suppressing the incidence and spread of rabies to humans and domestic animals. (40 CFR 164.132).

This preliminary decision may be appealed to the Administrator for a final Agency decision. Under EPA's Rules of Practice, if no appeal is made within 20 days after the ALJ files his Initial Decision, the Initial Decision becomes final. (40 CFR 164.101).

As indicated in Unit I.C—PAST EMERGENCY EXEMPTIONS, the Agency has for 12 years since 1973 authorized, under section 18 of FIFRA, the use of strychnine to control skunks for rabies suppression. The Agency does not believe that the section 18 "emergency exemption" authority should be used to permit the long-term use of a pesticide; rather, the section 3 registration process, if permitted by the hearings, would be the proper mechanism to consider use of a pesticide to address this recurring problem.

The Agency wants to complete the proceedings as soon as possible. It believes that a prompt, final decision in this matter, which the Agency has been addressing annually since 1973, would be in the public interest. Accordingly, it is establishing a deadline for issuance of an Initial Decision. The ALJ assigned to any adjudicatory hearing requested on the action initiated by this Notice shall issue an Initial Decision no later than January 13, 1986. Review of any exceptions to the Initial Decision will follow the schedule provided in 40 CFR 164.101, and a Final Decision will be issued as soon as possible thereafter.

In view of the limited scope of the issues, the Agency believes that seven months should give the participants ample time to conduct discovery, to present evidence, to conduct cross-examination, to prepare briefs for the ALJ, and for the ALJ to prepare and issue an Initial Decision.

If it appears that extraordinary circumstances exist which require additional time for completion of the hearing, the ALJ shall promptly inform the Judicial Officer of the circumstances which contribute to the need for more time and shall propose a schedule for completing the hearing, together with a new deadline for issuance of the Initial Decision. The Judicial Officer is given authority to establish a new schedule.

If an appeal from the Initial Decision is taken, the Agency expects to issue a final decision within 60 days.

C. Field Hearings

The principal location for this hearing will be EPA headquarters in Washington, DC. However, the Agency recognizes that some of the potential witnesses are located throughout the United States, especially in the Western States. Accordingly, the Agency will authorize the ALJ, upon a showing of good cause, to hold field hearings at other locations, if appropriate. The ALJ shall determine the appropriate location, timing, and duration of such field hearings. (40 CFR 164.50(a)(10)).

D. Separation of Functions

Finally, the Agency's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of this proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in an investigative or expert capacity, or with any of their representatives. (40 CFR 164.7).

Accordingly, the following Agency offices and the staffs of those offices, are designated as the judicial staff to perform the judicial function of the Agency in this proceeding: the office of the ALJ, the office of the Judicial Officer, the Administrator, the Deputy Administrator, and the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* contact or communication with any members of the trial staff or any interested persons not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations. (40 CFR 164.7).

Dated: June 7, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-13461 Filed 6-12-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010954.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (Port)
Japan Lines, Ltd. (Line)
Kawasaki Kisen Kaisha, Ltd. (Line)
Mitsui O.S.K. Lines, Ltd. (Line)
Nippon Yusen Kaisha (Line)
Yamashita-Shinnihon Steamship Co., Ltd. (Line)

Synopsis: The proposed agreement would permit the Port to lease to the Lines paved parking slots for operating a container yard within the confines of the Port's Garden City Terminal. The term of the is agreement for one (1) year commencing on the date the agreement becomes effective. The parties have requested a shortened review period.

Agreement No.: 202-010776-009.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A. P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the expenses provision of the agreement to provide that individual parties will be charged for the costs and expensses incurred by the Agreement in processing traffic filings requested or initiated by such individual parties for their own use. The parties have requested a shortened review period.

Dated: June 10, 1986.

By Order of the Federal Maritime Commission.

John Roberts Ewers,

Secretary.

[FR Doc. 86-13421 Filed 6-12-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Satcorp Shipping, Inc., et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Satcorp Shipping, Inc., 1120 Avenue of the Americas, Suite 4009, New York, NY 10036

Officers: Shih Chieh Kiao, President/Director; James A. Vena, Vice President/Director; Joseph Idler, Vice President/Director

M.S.S. Enterprise, 3112 Igloo St., Houston, TX 77205

Officers: Sam Pitman, President; Sandi Lewis, Secretary; Minera Johnson, Vice President/Treasuer.

Dated: June 10, 1986.

By the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-13407 Filed 6-12-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Oklahoma Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

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 June 30, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central Oklahoma Bancshares, Inc.*, Depew, Oklahoma; to acquire Depew Insurance Agency, Inc., Depew, Oklahoma, and thereby engage in credit-related insurance sales pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Creek and Lincoln Counties, Oklahoma.

Board of Governors of the Federal Reserve System, June 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13339 Filed 6-12-86; 8:45 am]

BILLING CODE 6210-01-M

Key Centurion Banchshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Centurion Bancshares, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Boone National Bank of Madison, Madison, West Virginia.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dawson Springs Bancorp, Inc.*, Dawson Springs, Kentucky; to merge with Kentucky State Bancorp, Inc., Scottsville, Kentucky, and thereby indirectly acquire Kentucky State Bank of Scottsville, Scottsville, Kentucky.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gateway Banchshares, Inc.*, Dallas, Texas; to become a bank holding company for acquiring 100 percent of the voting shares of Gateway National Bank, Dallas, Texas.

2. *Royal Banchares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Centreport National Bank, Fort Worth, Texas, a *de novo* bank, and Centre National Bank-Farmers Branch, Farmers Branch, Texas.

3. *Weimer Banschares, Inc.*, Weimer, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Weimar, Texas.

Board of Governors of the Federal Reserve System, June 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13340 Filed 6-12-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Renewal of Advisory Panel

AGENCY: GSA.

ACTION: Notice.

Renewal of Advisory Panel. This notice is published in accordance with the provisions of section 14(b)(1) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the renewal of the Joint Federal, State and Local Government Advisory Panel on Procurement and Supply for a 2-year period, without change in basic purpose.

The Administrator of General Services has determined that renewal of this Panel is in the public interest in connection with the performance of duties imposed on the General Services Administration by law.

Contact for Information. The Federal Supply Service (FSS) is the organization within GSA which is sponsoring this Panel. For additional information, contact William B. Foote, Assistant Commissioner for Policy and Agency Liaison, GSA/FSS, Washington, DC 20406, telephone 703-557-790.

Dated: June 4, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-13437 Filed 6-12-86; 8:45 am]

BILLING CODE 6820-24-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 Servcies (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 June 6, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages.)

Health Resources Services Administration

Subject: HRSA Noncompeting Training Grant Application and Supplements—Reinstatement—(0915-0061)
Respondents: Non-profit institutions
Subject: HRSA Competing Training Grant Application—Reinstatement—(0915-0060)

National Institutes of Health

Subject: Cancer Risk in Women Irradiated for Benign Gynecologic Disorders—NEW
Respondents: Individuals or households
OMB desk officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package.)

Subject: Organ Procurement Agency Histocompatibility Laboratory Statement of Reimbursable Costs—Revision—(0938-0102)
Respondents: Businesses or other for-profit; Non-profit institutions
Subject: Election to Recalculate Medicare Reimbursement Based on 42 CFR 405.457—NEW—HCFA-551-86
Respondents: Businesses or other for-profit
Subject: Information Collection Requirements in 42 CFR Part 405.1315, 1316, and 1317 Conditions of Participation for Laboratories—Extension—(0938-0368)—HCFA-R-42
Respondents: Business or other for-profit; Small businesses or organizations
Subject: BERC-192-F, Payment for Physicians' Services Furnished in Hospitals, SNFs and CORFs—Extension—(0938-0285)—HCFA-R-20
Respondents: Businesses or other for-profit
OMB desk officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package.)

Subject: Applications and Discontinuances for Aid to Families with Dependent Children—Revision—(0960-0148)
Respondents: State or local governments
Subject: Application for Supplemental Security Income—NEW
Respondents: Individuals or households
Subject: Request for Reconsideration-Disability Cessation—Extension—(0960-0349)
Respondents: Individuals or households
Subject: Quarterly Statement of Expenditures—Extension—(0960-0294)
Respondents: State or local governments
Subject: Waiver of Right to Appear—Disability Hearing—Revision—(0960-0352)
Respondents: Individuals or households
Subject: Request for Change in Time/Place of Disability Hearing—Revision—(0960-0348)
Respondents: Individuals or households
Subject: Quarterly Estimate of Expenditures—Extension—(0960-0301)
Respondents: State or local governments
OMB Desk Officer: Fay Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: June 10, 1986

Harry A. Hadd,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-13411 Filed 6-12-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85N-0474]

Federation of American Societies for Experimental Biology; Closed Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming closed meeting of the Federation of American Societies for Experimental Biology's (FASEB) Scientific Steering Group on the Use of Scientific Expertise in Food and Cosmetic Safety Analyses (Scientific Steering Group). The Scientific Steering Group will meet in executive session to review progress on Task Orders initiated since June 1, 1984, under a contract that FDA has with FASEB concerning the use of outside scientific expertise in food and cosmetic analyses.

DATE: The closed meeting will be held at 9 a.m., August 21 and 22, 1986.

ADDRESS: The meeting will be held at the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: FDA has a contract with FASEB (No. 223–83–2020) concerning the use of outside scientific expertise in food and cosmetic safety analyses. The objectives of this contract are (1) to provide expert, objective counsel to FDA on general and specific issues of scientific fact and (2) to explore various review mechanisms with respect to their effectiveness and efficiency. FASEB established the Scientific Steering Group to serve FASEB in conjunction with this contract.

Since June 1, 1984, FDA has given FASEB a series of Task Orders under this contract to study various issues. See, e.g., 50 FR 46832 (November 13, 1985); 50 FR 51453 (December 17, 1985); and 51 FR 2577 (January 17, 1986).

In accordance with 21 CFR 14.15(b)(1), notice is given that the Scientific Steering Group will hold a closed meeting in executive session on August 21 and 22, 1986, to review progress on the Task Orders under this contract.

Dated: June 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–13343 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–73–8004]

Memorandum of Understanding with the Agricultural Marketing Service

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding (MOU) with the Agricultural Marketing Service (AMS) that sets forth the working arrangements being followed or adopted to enable the AMS and FDA to discharge, as effectively as possible, their responsibilities relating to the sampling and aflatoxin testing of imported in-shell and shelled pistachio nuts.

DATE: The agreement became effective May 15, 1986.

FOR FUTHER 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 acccordance 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 Agricultural Marketing Service, United States Department of Agriculture and the Food and Drug Administration, Department of Health and Human Services

1. Purpose

This agreement outlines the authority and basis for cooperative efforts between the Food and Drug Administration (FDA) of the U.S. Department of Health and Human Services and the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA) regarding sampling and aflatoxin testing of imported in-shell and shelled pistachio nuts. Pistachio nuts, for purposes of this agreement, shall mean raw (unprocessed) pistachio nuts. This agreement supersedes the Memorandum of Understanding regarding sampling and aflatoxin testing of imported pistachio nuts that became effective on November 7, 1972.

II. Statutes Relating to the Agreement

A. FDA is charged with the enforcement of the Federal Food, Drug and Cosmetic Act (the FD&C Act). In fulfiling its responsibilies under the FD&C Act, FDA's activities are directed toward protecting the public health by ensuring that foods are safe and wholesome. One provision of the FD&C Act deems a food to be adulterated if it bears or contains any added poisonous or deleteriosu substance which may render it injurious to health.

B. AMS, under the authority of the Agricultural Marketing Act of 1946 (the AMA), carries out certain voluntary service functions designed to aid in the efficient marketing of agricultural products. Nothing in this agreement shall lessen the responsibilities of FDA under the FD&C Act nor of AMS under the AMA.

III. Background

Aflatoxins have been shown to cause cancer in certain laboratory animals. Aflatoxins are produced by the mold *Aspergillus flavus* and may contaminate various kinds of foods, including pistachio nuts. FDA and AMS have cooperated with United States importers in a program for sampling and aflatoxin testing of imported pistachio nuts. Neither AMS nor FDA has a formal agreement with the pistachio importers. The program is conducted on a voluntary basis whereby importers of pistachio nuts offer each lot of the product to USDA for inspection before introducing that lot into United States commerce. USDA is responsible for sampling and testing each lot for aflatoxin in accordance with procedures prescribed by FDA and for issuing an analysis certificate for each lot.

The two agencies believe that it is desirable from the standpoint of the public health to set forth in this Memorandum of Understanding the working arrangements that each agency follows in carrying out this program.

IV. Substance of Agreement

A. Application for Inspection

Under the voluntary program, the importer contacts the Fruit and Vegetable Division of AMS for inspection. Such contact is in the form of a written application, stating the entry number, the name, and the country of the shipper and identifying the lots to be sampled and tested. The following information will be specified: location of lots, number of bags, size of bags, code marks, markings, and other pertinent information.

B. Sampling

Samples will be drawn by inspectors of the Fruit and Vegetable Division, Fresh Products Branch, AMS as follows:

Total weight of lot	Percent of containers sampled	Total sample weight
75,000 lb or less	Minimum of 20%	Shelled—25 lb in-shell—50 lb
More than 75,000 lb to 150,000 lb.	Minimum of 20%	Shelled—50 lb in-shell—100 lb

For lots with total weight greater than 150,000 pounds (lb), a sample will be selected from 20 percent of the containers in the lot and consist of 25 lb of shelled nuts or 50 lb of in-shell nuts for each multiple of 75,000 lb (e.g., 150,000 to 225,000 lb requires a 3-fold sample of 75 lb shelled or 150 lb of in-shell nuts).

C. Aflatoxin Assay

Assays of samples will be performed in laboratories of the Fruit and Vegetable Division, Processed Products, Branch, AMS, in the following manner:

1. In-Shell Lots.

The entire sample of shells and kernels will be ground in a Hobart Vertical Cutter Mixer or equivalent. A well-mixed portion of the ground composite will be assayed chemically for aflatoxin, using the method prescribed by FDA, which at the time of this agreement is the method set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," Fourteenth Edition, section 26.067 or 26.068. Aflatoxin content will be calculated on a kernel weight basis.

2. Shelled Lots.

The entire sample shall be ground, including those kernels which have an obviously inedible appearance. A well-mixed portion of the gound composite will be assayed as in C.1.

D. Reporting

AMS will issue to the importer a separate analysis certificate for each lot offered for entry. Information sufficient for identifying the lot sampled and the results of the aflatoxin analysis will be shown on each certificate.

If the assay results are 20 or less ppb aflatoxin, a "negative" certificate will be issued. If the assay results are greater than 20 ppb aflatoxin, the level of aflatoxin found will be indicated on the certificate.

AMS will forward a copy of each certificate to the appropriate FDA District office.

V. Name and Address of Participating Agencies

A. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

B. Agricultural Marketing Service, U.S. Department of Agriculture, 12th St. and Independence Ave. SW., Washington, DC 20250.

VI. Liaison officers

A. For the Food and Drug Administration: Director, Division of Regulatory Guidance, (currently Howard N. Pippin), Center for Food Safety and Applied Nutrition (HFF–310), 200 C St. SW, Washington, DC. 20204, 202–485–0187.

B. For the Agricutural Marketing Service: Staff Officer, Inspection Section, (currently, Stephen E. Rayner), Processed Products Branch, Fruit and Vegetable Division, USDA, AMS, Rm. 0709, South Bldg., Washington, DC 20250, 202–447–5021.

VII. Period of Agreement

This agreement becomes effective upon acceptance by both parties, and will be effective indefinitely. It may be modified by mutual consent or terminated by either party upon a 30-day written notice.

APPROVED AND ACCEPTED FOR THE AGRICULTURAL MARKETING SERVICE

Dated: May 9, 1986.

James C. Handley,

Administrator, Agricultural Maketing Service.

Dated: June 9, 1986.

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

Dated: May 15, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

John M. Taylor,

Acting Association Commissioner for Regulatory Affairs.

[FR Doc. 86–13344 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0452]

Public Health Service Implementation Plans for Attaining the Objectives for the Nation; Nutrition Goals; Report Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the ad hoc Review Panel on Nutrition Goals is available to the public. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office (LSRO).

DATE: The final report was publicly available on April 10, 1986.

ADDRESSES: Requests for a copy of the final report should be sent to FASEB's Special Publications Office, FASEB, 9650 Rockville Pike, Bethesda, MD 20814, along with $18 to cover the cost. In the near future the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at LSRO, FASEB (address above), and at the Dockets Management Branch (HFA–305), Food and Drug Administraion, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 17, 1985 (50 FR 51453), FDA announced that LSRO of FASEB, under its contact with FDA (223–83–2020), was undertaking a study of the scientific community's views on the progress that the Public Health Service has made in implementing its plans for attaining its nutrition goals for 1990 of promoting health and preventing disease. In response to a request from FDA, the Scientific Steering Group that FASEB established under the contract recommended that LSRO appoint an ad hoc Panel to study this matter. As a result, LSRO established the ad hoc Review Panel on Nutrition Goals (the ad hoc Review Panel).

The ad hoc Review Panel conducted an open meeting on October 31 and November 1, 1985, to receive written and oral views, information, and data. Subsequently the ad hoc Review Panel conducted closed meetings on November 1, 1985, following the conclusion of the open meeting and again on November 14 and 15, 1985, and February 6 and 7, 1986, to consider all the information and views received at the open meeting, written submissions, and all other published data and information obtained in the course of the study.

In its final report, the ad hoc Review Panel presents its evaluation of the progress in attaining the Public Health Service National Nutrition Goals for 1990.

Dated: June 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–13342 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0493]

Revised Sampling Procedures for In-Shell Domestic and Imported Pistachio Nuts; Availability of Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is revising its current sampling procedures (Compliance Policy Guide (CPG) 7112.08) for determining the presence of aflatoxin in in-shell pistachio nuts to eliminate the retesting-crackout procedures provided for those lots of in-shell nuts found to coantain aflatoxin in excess of 20 micrograms/kilogram (20 parts per billion (ppb)) during the initial in-shell analysis. These actions are in response to a petition from the California Pistachio Commission (CPC) that demonstrates that the retesting-crackout procedures are inappropriate for pistachio nuts.

ADDRESS: Written comments on the revised sampling procedures for in-shell pistachio nuts and requests for single copies of FDA Compliance Policy Guide 7112.08 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: The CPC has submitted a petition requesting that the testing procedures found in CPG 7112.08 for aflatoxin in in-shell pistachio nuts be revised to eliminate the retesting requirement regarding lots of in-shell pistachio nuts using samples of cracked-out nuts from which obviously inedible kernels have been discarded. Current FDA policy provides that when a sample of in-shell nuts exceeds the 20 micrograms/kilogram action level for aflatoxin (calculated on a kernel weight basis), a second sample is to be analyzed before deciding to reject the shipment. The nuts in the second sample are cracked-out and the obviously inedible kernels are discarded prior to analysis. If this second sample does not

contain more than 20 micrograms/kilogram aflatoxin, the lot is not rejected.

In support of its petition, CPC submitted data that demonstrate (1) consumers do not eat in-shell pistachio nuts in the same way that they do other in-shell nuts, (2) a sizeable number, approximately 27 to 30 percent, of consumers do not visually inspect the kernel of each pistachio nut before consuming it, and (3) consumers do not use discretion in segregating and discarding the contaminated nuts before placing them in their mouths.

FDA has evaluated the conclusions drawn from CPC's data and is persuaded that significant numbers of consumers of in-shell pistachio nuts are not as selective in the nuts they eat as the agency originally believed when establishing the retesting requirements. Because a large percentage of consumers do not discard obviously inedible pistachio nut kernels, FDA believes that analyzing only cracked-out pistachio nuts after discarding obviously inedible kernels is an inappropriate method for deciding whether or not to reject a shipment of in-shell pistachio nuts for excessive aflatoxin residues. The agency has, therefore, revised CPG 7112.08 to delete the retest requirement.

CPG 7112.08 also refers to a memorandum of understanding (MOU/FDA 225–73–8004) that exists between FDA and the U.S. Department of Agriculture (USDA) which sets forth the working arrangements for each agency with respect to the sampling and aflatoxin testing of imported in-shell and shelled pistachio nuts. As announced in a separate notice published elsewhere in this issue of the **Federal Register**, the MOU between FDA and the USDA Agricultural Marketing Service also was revised effective May 9, 1985, to delete the retest requirement.

Copies of the revised CPG and the petition are on file in the Dockets Management Branch. Requests for single copies of CPG 7112.08 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

Interested persons may submit written comments, data, and information regarding these revisions to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–13345 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–72–2001]

Memorandum of Understanding With the Agricultural Marketing Service

Correction

In FR Doc. 86–11946 appearing on page 19412 in the issue of Thursday, May 29, 1986, make the following correction:

In the **FOR FURTHER INFORMATION CONTACT:** caption, in the fourth line, the telephone number should read "301–443–1583."

BILLING CODE 1505–01–M

National Institutes of Health

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board and its subcommittees on June 30, 1986, 1:00 p.m. to 5:00 p.m. at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his offices.

Dated: June 6, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–13338 Filed 6–12–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of June 1986:

Name: National Advisory Council on Health Care Technology Assessment

Date and Time: June 20, 1986, 8:30 AM

Place: Sheraton Grand Hotel, Central Ballroom, 525 New Jersey Avenue Northwest, Washington, DC 20001

Closed June 20, 11:30 AM to 12:00 Noon.

Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mr. William M. Whorton, Jr., National Center for Health Services Research and Health Care Technology Assessment, Stop 330, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5653.

Agenda items are subject to change as priorities dictate.

John E. Marshall, Ph.D.,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86–13409 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions and Delegations of Authority; Health Resources and Services Administration

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 51 FR 17249–52, May 9, 1986) is amended to reflect the transfer of the intergovernmental and regional operations functions from the Immediate Office of the Administrator to the Office of Policy Coordination in the Office of the Administrator.

Under HB–10, Organization and Functions amend the statements for the *Office of Administrator (HBA)* as follows:

(1) Delete the functional statement for the *Immediate Office of the Administrator (HBA1)* and substitute the following:

Immediate Office of the Administrator (HBA1). (1) Provides leadership and direction to the programs and activities of the Health Resources and Services Administration; (2) advises the Assistant Secretary for Health on policy matters concerning the Agency's programs and activities; and (3) coordinates the Agency's international health activities.

(2) Delete the functional statement for the *Office of Policy Coordination (HBA3)* and substitute the following:

Office of Policy Coordination (HBA3). Under the direction of an Associate Administrator for Policy Coordination who is a member of the Administrator's immediate staff: (1) Advises the Administrator and, upon his direction, other top Health Resources and Services Administration officials, in the identification and, when appropriate, resolution of program policy issues, initiatives, and problems; (2) performs the secretariat functions for the Administrator in his role as Chairperson of the Health Resources and Services Administration Policy Staff; (3) plans, organizes, and directs the Executive Secretariat of the Administration, with primary responsibility for preparation and management of written communications to and from the Administrator; (4) serves as the Administrator's primary staff advisor and coordination unit regarding intergovernmental affairs and regional operations; (5) coordinates the preparation of proposed rules and regulations relating to HRSA programs, and coordinates HRSA review and comment on other Public Health Service and Department of Health and Human Services regulations that may affect HRSA programs; and (6) oversees and coordinates the committee management system of the Administration.

These organization and functional changes are effective upon date of signature.

Dated: June 2, 1986.

Donald Ian Macdonald,

Assistant Secretary for Health.

[FR Doc. 86–13406 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–16–M

Statement of Organization, Functions and Delgations of Authority; Health Resources and Services Administration

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organizations, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 51 FR 17249–52, May 9, 1986) is amended to reflect the transfer of the clinical affairs function from the Immediate Office of the Administrator to the Office of Planning, Evaluation and Legislation in the Office of the Administrator.

Under HB–10, Organization and Functions amend the statement for the *Office of Planning, Evaluation and Legislation (HBA6)* by deleting the word "and" before item number (7), changing the period at the end of the item number (7) to a semicolon, and adding the following after item number (7):

"and (8) developed and manages the clinical affairs program for the Agency."

This organization and functional change is effective upon date of signature.

Dated: June 2, 1986.

Donald Ian Macdonald

Acting Assistant Secretary for Health.

[FR Doc. 86–13408 Filed 6–12–86; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Privacy Act of 1974: Notice of a Computer Matching Program

AGENCY: Social Security Administration, Department of Health and Human Services.

ACTION: Notice of a computer matching program—Social Security Administration (SSA)/State and/or local governmental agencies—Expansion of the State and Federal Exchange (SAFE) matching program.

SUMMARY: SSA is issuing public notice of its intent to expand the SAFE matching program to encompass matching with any State and/or local governmental agency records containing information which may impact on an individual's eligibility for, or amount of, payments under the Supplemental Security Income (SSI) program. In addition, SSA is expanding the SAFE matching program to include matching with any State and/or local governmental agency records containing information which may impact on continuing entitlement to, or the amout of, Retirement, Survivor or Disability Insurance (RSDI) benefits. Currently, the SAFE matching program is an interface between SSA's Supplemental Security Income Record (SSR) (**Federal Register,** dated October 13, 1982, pages 45635–45636) matched against the files of State agencies containing State benefit payment information.

The expanded program will allow comparison of the SSR with information contained in other State records containing data impacting SSI eligibility or payment amount, in addition to the State benefit payment records currently covered by SAFE. The purpose of this portion of the SAFE program is to detect unreported or misreported income and/or resources which may contribute to erroneous SSI payments.

In addition, the expanded program will allow comparison of the Master Beneficiary Record (MBR) **Federal Register,** dated August 28, 1984, pages 34091–34096) with information contained in State and/or local governmental agency records impacting on the continuing entitlement to, and/or the amount of, RSDI benefits. The purpose of this portion of the SAFE program is to detect unreported or misreported earnings, or other data which may contribute to erroneous RSDI benefit payments.

DATE: Data exchanges involving State benefit payment records have been performed since the original report made in 1981. Under the expanded program, data exchanges involving a search for the existence of Medicaid payments are planned for fiscal year 1986 in two States (Missouri and New Mexico). In addition, data exchanges involving income reported to the States as wages are planned for the same fiscal year. Other State and/or local governmental agency record matches may be implemented in the future as needed. Cost benefit information and comments received will determine whether individual matches should be continued expanded or terminated.

ADDRESS: Interested individuals may comment on this proposal by writing to the Social Security Administration, Attention: SSA Privacy Officer, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection by contact with the SSA Privacy Officer at the above address.

FOR FURTHER INFORMATION CONTACT: For information concerning the matching of the SSR, contact Mr. Ronald Sribnik, Chief, Program Quality Branch, Office of Supplemental Security Income, 3–G–1 Operations Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–5884.

For information concerning the matching of the MBR, contact: Ms. Laurie Watkins, Chief, Beneficiary Reporting Branch, Office of Retirement and Survivors Insurance, 3–A–26 Operations Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–2548.

SUPPLEMENTARY INFORMATION: The current SAFE matching program resulted from an October 1979, General Accounting Office report entitled, "Social Security Should Obtain and Use State Data to Verify Benefits for All Its Programs." In short, the report criticized SSA for not using State and local data in the enforcement of its programs.

The SAFE matching program was originally reported to the Office of Management and Budget (OMB) and to the Congress on Arpil 13, 1981 as required by the then applicable OMB Matching Guidance published in the **Federal Register** on August 4, 1978 and effective on April 18, 1979. In summary, the matching program as described at that time consisted of an interface between SSA's SSR and State files containing payment data on individuals receiving benefits from State payment programs; e.g., unemployment compensation, workers' compensation, general assistance, etc. The matching program was considered desirable to insure accurate reporting of incomes from State programs, thereby permitting correct computation of SSI payments and preventing overpayments.

SSA's experience has shown that the States maintain information other than State benefit payment data which can affect both the eligibility for, and the amount of, SSI payments. The States also maintain data which can affect the continuing entitlement to, and the amount of, RSDI benefit payments. Therefore, we are announcing our intent to match the SSR with all types of State files which contain data impacting on SSI payments. In addition, SSA intends to match the MBR with the State and/or local governmental agency files which may impact on RSDI benefits.

Obtaining eligibility and entitlement information through State and/or local matching programs will permit timely and proper payments as well as detect and/or prevent erroneous payments.

Further information regarding the SAFE matching program, including the authority for the program, a description of the program, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition of the records are provided in the text below. This information is required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Matching Programs **Federal Register**, dated May 19, 1982, pages 21657–21658). A copy of this notice has been provided to both Houses of Congress and to OMB.

Dated: June 5, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

Notice of a Computer Matching Program

Social Security Administration (SSA) Matching With State Records Expansion of the State and Federal Exchange (SAFE) Program

A. *Authority:* Sections 205 and 1631(e)(1)(B) of the Social Security Act.

B. *Description of Computer Matching Program:*

1. *Organizations Involved:* SSA and the State agencies which maintain any records containing information which may affect an individual's eligibility for, or the amount of, payments under the Supplemental Security Income (SSI) program. Also, SSA and the State and/or local governmental agencies which maintain any records containing information which may affect the continuing entitlement to Retirement, Survivor or Disability Insurance (RSDI) benefit payments.

2. *Purpose:* This matching program resulted from an October 1979 General Accounting Office report entitled "Social Security Should Obtain and Use State Data to Verify Benefits for All Its Programs." The report criticized SSA for not using State and local data in the enforcement of its payment programs. The matching program was instituted in 1981 and involved matching SSA's SSI records with State benefit payment files. The program is being expanded to encompass any State and/or local governmental agency records containing information which may affect SSI eligibility or payment amount and continuing entitlement to, or the amount of, RSDI benefits (e.g., benefit payment records, wage records, records of health/income-maintenance programs, etc.). State and local data will be used to make timely and proper payments and detect and/or prevent erroneous payments.

3. *Procedures:* Generally, if the match becomes an ongoing one, the State and/or local agencies will furnish extracts of their files containing identifying data (name, Social Security number and date of birth) to SSA. This file will be processed against SSA's record of all SSI recipients and RSDI beneficiaries. However, in some cases it may be necessary for SSA to have the State perform the actual matching operation.

For those records matched, action will be taken to assure that SSI payments and RSDI benefits are being paid properly. The State and/or local information will be treated as a third-party lead requiring confirmation with the individual concerned prior to any proposed payment adjustment. SSA will make no further subsequent contacts with the State and/or local governmental agency as part of these matches, except in specific cases where there are inconsistencies.

C. *Records to be Matched:* SSA will institute a computerized match of the Supplemental Security Income Record (SSR), (HHS/SSA/OURV 09–60–0103, **Federal Register**, dated October 13, 1982, pages 45635–45636), and the Master Beneficiary Record (MBR), (HHS/SSA/OURV 09–60–0090, **Federal Register**, dated August 28, 1984, pages 34091–34096) against extracts of State and/or locally maintained files. The State and/or local files may include records of benefit payments, such as State pensions, workers' compensation and general assistance, wage records, tax files and any other State and/or local file which includes information which could affect eligibility for, or the amount of, SSI payments and the continuing entitlement to, or amount of, RSDI benefits. The first match under the expanded program will involve the State of Missouri's Medicaid records. Missouri will perform the matching operation for SSA against data extracted from the SSR for Missouri Medicaid recipients and will provide SSA with data only for those records matched.

D. *Projected Starting and Ending Dates:* The first matches under the expanded program will occur in fiscal year 1986. A cost benefit analysis will be undertaken to determine whether the matches should be continued, expanded or terminated.

E. *Security Safeguards:* When SSA performs the matching operation,

security safeguards pertaining to the SSR as reflected in the **Federal Register**, dated October 13, 1982, pages 45635–45636, and to the MBR as reflected in the **Federal Register**, dated August 28, 1984, pages 34091–43096, will apply.

All magnetic tapes and disks are maintained within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge which is issued only to authorized personnel. All microfilm and paper files are accessible only to authorized personnel with a need to know. Safetguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. The same safeguards will apply to the State tapes while they are in the possession of SSA.

When the States perform the matching operations, they will follow the safeguards established in existing agreements with SSA. States receive the extracts from the SSR and the MBR at this time for administration of a variety of health/income-maintenance programs. The existing agreements call for the State to:

1. Limit access to the data to only those employees and officials who need it to perform their official duties;

2. Store the data in an area that is physically safe from access by unauthorized persons;

3. Store and process magnetic tapes in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminals or other means;

4. Advise all personnel who will have access to the data of the confidential nature of the information, the safeguards required, the criminal sanctions for noncompliance contained in Federal statutes (such as section 1106(a) of the Social Security Act) and any relevant State statutes; and

5. Permit SSA to make onsite inspections to ensure that adequate safeguards are being maintained.

Other safeguards such as destroying or returning the file and using the file only for this specific match are not appropriate because the MBR and the SSR are given to the States pursuant to published Privacy Act routine uses (e.g., disclosure to the States for the administration of State supplementation and the Medicaid program) to serve a variety of purposes.

F. *Disposition of Records:* Data received will be used only for the purposes of this matching program and the tapes will be returned to the State and/or local governmental agencies maintaining the records after the matching operation. A record of any "match" will be placed in the claims folder of the involved individual. Information regarding the matched records will be incorporated into the MBR and the SSR. Printouts of match records will be disposed of by SSA field office personnel in accordance with the appropriate Federal Records Retention Schedule (44 U.S.C. 3303a).

G. *Other Comments:* For those records matched, SSA will take proper action to assure that SSI payments and RSDI benefits are being paid properly. No changes will be made to an individual's payments or benefits without first providing due process to the individual concerned. Disclosures are made pursuant to the routine uses published in the **Federal Register** for the MBR and the SSR.

[FR Doc. 86–13384 Filed 6–12–86; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–86–1612; FR–2242]

Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1986 and Deadlines for Submission of Program Descriptions; Correction

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

ACTION: Notice; correction.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on Tuesday, June 3, 1986 (51 FR 20222) which, is part, estabalished deadlines for submitting Program Descriptions for the Rental Rehabilitation Program in Fiscal Year 1986. That notice erroneously provided that a State that elects to participate in the rental Rehabilitation Program in Fiscal Year 1986 must deliver its Program Description or have it postmarked by August 9, 1986. The correct deadline for delivery or postmarking of a State's Program Description is August 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Room 7162, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC. Telephone (202) 755–5970. (This is not a toll-free number.)

Accordingly, in FR Document 86–12445 published on June 3, 1986 (51 FR 20222) on page 20223, column three, first paragraph, "August 9, 1986" is corrected to read "August 18, 1986".

Dated: June 9, 1986.

Donald A. Franck,

Acting Assistant, General Counsel for Regulations.

[FR Doc. 86–13310 Filed 6–12–86; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–86–1603; FR–2236]

Housing Development Grant Program; Correction

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

ACTION: Invitations for Applications; correction.

SUMMARY: This document corrects a notice that was published in the **Federal Register** on Thursday, June 5, 1986 (51 FR 20576), inviting applications to be submitted for the Housing Development Grant Program for Fiscal Year 1986. This document erroneously indicated that revised Application Packets would not be available until June 16, 1986. Application Packets, however, have been available as of the date of publication of the Invitation for Applications. In addition, Appendix A contained the wrong addresses and telephone numbers for the Boston and Chicago Offices and omitted the room number for the New York Regional Office.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Acting Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 755–6142. (This is not a toll-free number.)

Accordingly FR Document 86–12443 published on June 5, 1986 (51 FR 20576) is corrected to read as follows:

1. On page 20579, column three, sixth paragraph, "June 16, 1986" is corrected to read "June 5, 1986".

2. On page 20580, column one, "Boston Regional Office" is corrected to read "Boston Office" and the accompanying address and telephone number are corrected to read "Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts 02114–2598, (617) 223–4161".

3. On page 20580, column two, the address for the New York Regional Office is corrected to read "26 Federal Plaza, Room 32130, New York, New York 10278–0068, (212) 264–8053".

4. On page 20580, column three, "Chicago Regional Office" is corrected

to read "Chicago Office" and the accompanying address and telephone number are corrected to read "547 West Jackson Boulevard, Chicago, Illinois 60606–5760, (312) 353–6816".

Dated: June 9, 1986.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 86–13311 Filed 6–12–86; 8:45 am]

BILLING CODE 4210–27–M

Office of the Secretary

[Docket No. D–86–817; FR–2233]

Amendment of Delegation of Procurement Authority to the Field

Correction

In FR Doc. 86–9429 appearing on page 15850 in the issue of Monday, April 28, 1986, make the following correction: In the third column, in the second complete paragraph, in the eighth line, "wood processing" should read "word processing".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget Interim Department Desk Officer, Washington, D.C. 20503, Telephone (202) 395–7340.

Title: Timber Sale Contracting, 43 CFR 5442.1

Abstract: These forms are used by prospective purchasers of Bureau of Land Management timber

Bureau Form Number: 5440–9

Frequency: Occasionally.

Description of Respondents: Individuals, companies and corporations submitting bids on Bureau of Land Management timber sales.

Annual Responses: 500

Annual Burden Hours: 625

Bureau Clearance Officer (alternate): Rebecca Daugherty (202) 653–8853

Dated: April 24, 1986.

Vincent J. Hecker,

Acting Assistant Director, Lands and Renewable Resources.

[FR Doc. 86–13391 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–84–M

Availability of Draft Environmental Impact Statement; Egin-Hamer Road Plan, ID

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the proposed Egin-Hamer Road plan amendment.

DATE: Comments will be accepted until September 11, 1986.

ADDRESS: Comments should be sent to: Bureau of Land Management, Idaho State Office, 3380 American Terrace, Boise, Idaho 83706, Attn: Egin-Hamer Project.

FOR FURTHER INFORMATION CONTACT: O'dell Frandsen, District Manager, Idaho Falls District Office, BLM, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: 208–529–1020.

SUPPLEMENTARY INFORMATION: Fremont and Jefferson Counties in eastern Idaho have applied for a right-of-way across public land to construct a year-round gravel road approximately 10 miles long. The road would serve as a farm-to-market route for the farming area northwest of St. Anthony, Idaho.

The proposed road would cross through the Nine Mile Knoll Area of Critical Environmental Concern (ACEC), which was designated by the approval of the Medicine Lodge Resource Management Plan. The purpose of the ACEC is to establish management constraints to protect a herd of 2,000 elk that winter in the area. The management constraints include prohibition of new roads or major right-of-way and a winter vehicle closure. Granting the rights-of-way would require amending the plan to reduce the size of the ACEC from 31,000 acres to 27,700 acres so that the road would become the southern boundary of the ACEC.

Four of the alternatives considered in the EIS would enlarge the existing ACEC by 11,390 acres in order to include more of the elk herd's crucial winter habitat under the protective constraints of the ACEC. Each of these four alternatives would provide for a corridor through the ACEC for a road. Otherwise, the management constraints would remain as at present.

A limited number of copies of the EIS are available from the BLM's Idaho State Office, listed above. Copies of the EIS are available for inspection at the Idaho Falls District Office, listed above.

Dated: May 30, 1986.

Delmar Vail,

Idaho State Director, Bureau of Land Management.

[FR Doc. 86–13349 Filed 6–12–86; 8:45am]

BILLING CODE 4310–75–M

[CA–12436]

Realty Action: Land Exchange in Lassen and Modoc Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: CA–12436, modification of notice of realty action; exchange of public lands in Lassen and Modoc Counties, CA.

SUMMARY: This document modifies a Notice of Realty Action published in the **Federal Register** on March 15, 1984 (49 FR 9781–82) and corrected on March 30, 1984 (49 FR 12760), on April 10, 1984 (49 FR 14208) and on December 31, 1984 (49 FR 50792). The Notice and subsequent corrections concerned an exchange of public lands in Lassen and Modoc Counties, California, to be traded for private lands in those same counties. The private landowner is Lyneta Ranches of Alturas, California.

The original Notice segregated the public lands described in the Notice from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchange proposal in the original Notice was protested. A Bureau of Land Management (BLM) decision denying the protest and proceeding with the exchange was appealed to the Interior Board of Land Appeals (IBLA) in February of 1985. The IBLA issued a decision on February 27, 1986, vacating the BLM decision and remanding the case to BLM for further analysis.

As a result of the protest and appeal process, the exchange has been delayed beyond the anticipated completion date, and the segregation period provided for in the original notice has expired. To ensure that the exchange and appeal process is not disrupted by new filings or applications, the Notice of March 15, 1984 (49 FR 9781–81), as corrected, is hereby modified to renew the segregation period for an additional two years. The publication of this modification notice in the **Federal Register** shall renew the segregation of the public lands described in the Notice of March 15, 1984 (49 FR 9782–82), as

corrected, for a period of two additional years. These public lands are segregated from all other forms of appropriation and entry under the public land laws and the mining laws.

FOR FURTHER INFORMATION CONTACT: Peter Humm or Lynda Roush, Susanville District Office, 705 Hall Street, Susanville, California 91630, at (916) 257–5381.

C. Rex Cleary,

District Manager.

[FR Doc. 86–13424 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–40–M

[I–14921, I–14968]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture, proposes that 208.80 acres of withdrawals for the Rooks Creek and Greenhorn Administrative Sites, continue for an additional 30 years, which is the time the sites will continue to be used. These lands would remain closed to surface entry, and mining, but not mineral leasing.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208–334–1735.

The Forest Service proposes that the existing land withdrawals made by two separate Secretarial Orders of February 26, 1908, be continued for a period of 30 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

I–14921

T. 3 N., R. 17 E., B.M.
Sec. 15, S½NE¼, N½,SE¼

I–14968

T. 4 N., R. 16 E., B.M.
Sec. 26, metes and bounds description.

The area described above aggregates 208.80 acres in Blaine County.

The withdrawals are essential for protection of substantial capital improvements on the Administrative Sites. The withdrawals closed the described lands to surface entry, and mining but not mineral leasing. No change in the segregatrive effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The unauthorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: June 6, 1986.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 86–13348 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

U.S. Cites Annual Report Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1984 U.S. CITES Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service has issued the 1984 annual report summarizing international trade involving the United States in plant and wildlife species regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as required by article VIII, paragraph 7, of the Convention. The report covers the period Janaury 1, 1984, to December 31, 1984. The report also covers the Service's administration of the Convention (biennial report) during the period Janaury 1, 1983, to December 31, 1984. By this notice, the public is informed that the report is available and that any interested individual may secure a copy by written request to the National Technical Information Service. This notice also provides ordering information for reports for 1977–1983.

ADDRESS: Written requests for copies should include a check for the cost of the report (see list, below), include the report number and form of report (printed or microfiche; see list, below), and be addressed to U.S. Department of Commerce, National technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, 703/487–4650 (sales desk).

FOR FURTHER INFORMATION CONTACT: Mr. Earl B. Baysinger, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Mail Code 600 Broyhill, Department of the Interior, Washington, DC 20240, 703/235–2418.

SUPPLEMENTARY INFORMATION: The CITES regulates international trade in certain plant and wildlife species, which are listed in appendices to the Convention. The United States, as 1 of 91 Parties to CITES, is required to produce an annual report summarizing U.S. trade in these species and a biennial report summarizing U.S. legislative, regulatory, and administrative measures taken to enforce the provisions of the Convention. The Federal Wildlife Permit Office, on behalf of the Service, has compiled eight annual reports, beginning in 1977, and three biennial reports: 1978–1979 (Included with the 1979 annual report), 1980–1982 (1982), and 1983–1984 (1984).

The U.S. CITES Annual Reports are identified as follows:

Year	Report No., form code, and cost
1977	Report No. PB 84 146133 $11.50— printed (A05) $4.50—microfiche (A01)
1978	Report No. PB 84 146141 $14.50—printed (A10) $4.50—microfiche (A01)
1979	Report No. PB 82 128646 $19.00—printed (A10) $4.50—microfiche (A01)
1980	Report No. PB 83 143198 $22.00—printed (A12) $4.50—microfiche (A01)
1981	Report No. PB 83 188524 $40.00—printed (A24) $4.50—microfiche (A01)
1982	Report No. PB 84 146158 $23.50—printed (A13) $4.50—microfiche (A01)
1983	Report No. PB 85 241370 $26.50—printed (A15) $4.50—microfiche (A01)
1984	Report No. PB 86 184447/A5 $22.95—printed (A13) $5.95—microfiche (A01)

This notice was prepared by Jeffrey P. Jorgenson, General Biologist, Federal Wildlife Permit Office, Management Operations Branch, 703/235–2418.

Dated: June 4, 1986.

Ronald E. Lambertson,

Deputy Director, U.S. Fish and Wiidlife Service.

[FR Doc. 86–13422 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Serivce.

ACTION: Notice of the receipt of a proposed development operations coordiantion document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7917, Block 306, Ewing Bank Area, Offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on May 29, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to to § 390.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: June 2, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–13432 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4537, Block A–31, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on June 3, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region. Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–13431 Filed 6–12–86; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14–08–001–3847, submitted on May 29, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 40 Federal unit.

The propose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-13433 Filed 6-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Lease Nos. W-0311610, W-0312311, and W-0313668]

Availability of Final Environmental Impact Statement on the Proposed Mining Plan, East Gillette Federal Mine, Campbell County, WY

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

ACTION: Notice of availability of final environmental impact statement (OSM-EIS-15).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a final environmental impact statement (EIS) on the proposed East Gillette Federal mine. The EIS has been prepared to assist the Secretary of the Interior in making a decision on Kerr-McGee Coal Corporation's application for a permit to mine coal approximately 3 miles east of the city of Gillette, Wyoming.

ADDRESS: Copies of the final EIS may be obtained from Allen D. Klein, Administrator, Attn: Sarah Bransom, OSMRE, Western Technical Center, Second Floor, Brooks Towers, 1020-15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Sarah Bransom, Project Leader, Environmental Analysis Branch (telephone: 303-844-2451) at the Denver, Colorado, location given under "ADDRESS."

SUPPLEMENTARY INFORMATION: Kerr-McGee Coal Corporation proposes to mine an average of 11 million tons of coal per year, or 256 million tons of coal over a 25-year period, at its East Gillette Federal mine. The proposed mine would disturb 2,604 acres of land. Six coal mines are currently in operation, and one more is proposed for operation, in the general vicinity of Kerr-McGee's proposed mine.

A draft EIS prepared by the U.S. Geological Survey (USGS) for the proposed East Gillette Federal mine was submitted for public review and comment in April 1977, prior to the enactment of the Surface Mining Control and Reclamation Act (SMCRA). On April 17, 1980, USGS held a scoping meeting on the East Gillette Federal mine, as then proposed, in Gillette, Wyoming. Since 1980, Kerr-McGee has made several revisions to its plans for mining the coal underlying its three leaseholds to meet requirements of SMCRA, OSMRE, and the Wyoming Department of Environmental Quality (DEQ). Because of these revisions and the amount of time elapsed, the East Gillette Federal mine draft EIS prepared by USGS has been withdrawn and replaced by a new draft and this final EIS prepared by OSMRE. OSMRE's final EIS is based on (1) the comments USGS received on both the mine as proposed in 1977 and the 1977 draft EIS it had prepared, (2) the current permit application package, which was filed by Kerr-McGee with OSMRE and Wyoming DEQ on August 20, 1982, and (3) The new draft EIS issued by OSMRE on March 26, 1984.

In accordance with SMCRA, the Secretary of the Interior must take some action on Kerr-McGee's mining plan. The alternative actions available to him are (1) to approve the mining plan in order that a Federal permit can be issued with conditions to bring it into compliance with Federal and State regulations (alternative A); (2) to disapprove the mining plan, in which case no Federal permit to mine coal would be issued (alternative B); (3) to take no action on the mining plan (alternative C); and (4) to delay the decision to approve or disapprove the mining plan for the proposed East Gillette Federal mine. OSMRE has identified alternative A as its preferred alternative.

The East Gillette Federal mine final EIS identifies and analyzes the probable impacts to the quality of the human environment that would result should alternative A be implemented. The discussion of impacts includes the environmental consequences resulting from mining both the proposed East Gillette Federal mine and the other existing and proposed mines in the area. At the same time OSMRE prepared the final EIS, Wyoming DEQ issued Kerr-McGee a State permit to mine non-Federal coal for the East Gillette Federal mine on February 4, 1986.

In preparing the final EIS, OSMRE has revised the deraft EIS in response to comments received during the public comment period. These comments and OSMRE's responses to them are included in the final EIS.

Dated: June 9, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86-13379 Filed 6-12-86; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; A.I.D. Mailing List

The Agency for International Development (A.I.D.) requires that the lending opportunities of the A.I.D. Housing Guaranty Program be advertised and that borrowers solicit and provide fair consideration to all bids received. A.I.D. publishes a notice of each investment opportunity in the **Federal Register** and also sends copies of the notice to persons and firms on the A.I.D. mailing list, who have expressed interest in the investment opportunities. The current A.I.D. mailing list is considered outdated. It will be terminated on September 30, 1986. Commencing October 1, 1986, a new mailing list will be in effect and will consist of persons and firms who have requested a new listing. Interested persons and firms should address their request in writing by August 31, 1986 to: Mr. Herbert T. McDevitt, Agency for International Development, PRE/H, Room 3208 NS, Washington, DC 20523.

Dated: June 6, 1986.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86-13403 Filed 6-12-86; 8:45 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Second Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Republic of Panama as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in the Republic of Panama. This investment opportunity had been previously advertised. All bid participants were advised by the Republic of Panama that none of the proposals received were acceptable. The Republic of Panama has authorized A.I.D. to request new proposals from eligible investors. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

REPUBLIC OF PANAMA

Project: 525-HG-012—$10,000,000

Attention: Mr. Eduardo Dudley, Director, Ministry of Planning and Economic Policy,

Apartado 2694, Zona 3, Panama, Republic of Panama
Telephone: 69-4992 or 69-1810
Telex: 3683 (MIPPE)

Interested investors should telegram their bids to the Borrower's representative on July 1, 1986 but no later than 12:00 noon Panama Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. William Gelman, RHUDO/PSA, USAID/Panama Ave., Manuel Espinosa Batista, Apartado 6959, Panama 5, Republic of Panama
Telex: c/o American Embassy, USAID/Panama; Panama City, Republic of Panama
Michael G. Kitay, Agency for International Development, GC/PRE, room 3208 N.S., Washington, DC 20523
Telex No.: 892703 AID WSA
Telefax No.: 202/647-6901

Each proposal should consider the following terms:

(a) *Amount*: U.S. $10.0 million. The borrowing should be so structured that the sum of the principal disbursed to the Borrower and interest unpaid, accrued and capitalized during the grace period should not exceed $10.0 million.

(b) *Term*: Up to 30 years.

(c) *Grace Period on Principal*: 10 years, to be amortized gradually after end of grace period.

(d) *Grace Period on Interest*: Proposals should be made with a grace period up to three years on interest payments. Interest earned during the grace period will be capitalized and added to the principal to be amortized starting at the end of the ten year grace period for payments on principal.

(e) *Interest Rate*: Proposals will be made on the basis of fixed interest rate.

(f) *Draw Down*: Net proceeds from borrowing should be disbursed to Borrower upon signing through an escrow account. Notwithstanding, proposals with disbursements of 50 percent of borrowing's net proceeds upon signing and the remaining 50 percent to be disbursed six months later will be welcome.

(g) *Prepayment*: Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(h) *Investment Expense*: Borrower has agreed to pay for all investment expenses, fees, and costs at closing from the proceeds of the loan. All such costs, fees, and commissions shall be clearly specified in each proposal.

(i) *Contracting of loan must be concluded before July 31, 1986.*

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficiary owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room 3208 N.S., Washington, DC 20523, Telephone: (202) 647-9082.

Dated: June 9, 1986.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86-13402 Filed 6-12-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers; Land O'Lakes, Inc., et al.

Dated: June 10, 1986.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) and (2) Land O'Lakes, Inc., P.O. Box 116, Minneapolis, MN 55440;
(3) 4001 Lexington Avenue North, Arden Hills, MN 55112;
(4) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13375 Filed 6-12-86; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the below named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. The parent corporation is: James River Corporation (a Virginia corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217.

2. The wholly-owned subsidiaries which will participate in the operations are as follows:

(i) James River-U.S. Holdings, Inc. (a Delaware corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217;

(ii) James River Paper Company, Inc. (a Virginia corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217;

(iii) James River-Norwalk, Inc. (a Delaware corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217;

(iv) James River-Pepperell, Inc. (a Virginia corporation), Post Office Box 1370, East Pepperell, Massachusetts 01437; and

(v) Arkon Corporation (a South Carolina corporation), 315 Pendleton Road, Greenville, South Carolina 29611.

3. The divisions of the above subsidiaries operate as follows:

(i) *James River-U.S. Holdings, Inc.:*

Riverside Transportation, Inc., Post Office Box 2218, Richmond, Virginia 23217

*James River-Graphics, Ltd. 28 Gaylord Street, South Hadley, Massachusetts 01075.

(ii) *James River Paper Company, Inc.:*

James River Paper Company, Papermaking Division, Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

James River Paper Company, Converting Division, Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

James River-Rochester, Adams Division, 115 Howland Avenue, Adams, Massachusetts 01220

*James River-Rochester, Rochester Division, 340 Mill Street, Rochester, Michigan 48663

*Riegel Products Corporation, Frenchtown Road, Milford, New Jersey 08848

James River-Curtis, Paper Mill Road, Newark, Delaware Mill, Newark, Delaware 19711

Peninsular Paper Company, Ypsilanti, Michigan Mill, 100 North Huron, Ypsilanti, Michigan 48197

James River-Fitchburg, Old Princeton Road, Fitchburg, Massachusetts 01220

*James River-Massachusetts, 701 Westminster Street, Fitchburg, Massachusetts 01420

James River-Otis, Post Office Box 10, Jay, Maine 04239

*James River-KVP, Island Avenue, Parchment, Michigan 49008

James River-Berlin/Gorham, 650 Main Street, Berlin, New Hampshire 03570

*James River-Groveton, Mechanic Street, Groveton, New Hampshire 03582

H.P. Smith Paper Company, 5001 West 66th Street, Chicago, Illinois 06038

H.P. Smith Paper Company, 2000 Industrial Park Road, Iowa City, Iowa 52240.

(iii) *James River-Norwalk, Inc.:*

*James River Corporation, Paperboard Packaging Group, 243 East Paterson Street, Kalamazoo, Michigan 49007

*James River Corporation, Dixie Products Group, Post Office Box 6000, River Park, 800 Connecticut Avenue, Norwalk, Connecticut 06856–6000

James River Corporation, Towel and Tissue Group, Post Office Box 6000, River Park, 800 Connecticut Avenue, Norwalk, Connecticut 06856–6000

James River Corporation, Paperboard Packaging Group, Gilco Division, 28740 Glenwood, Perrysburg, Ohio 43551.

(iv) Arkon Corporation; Arkon, Post Office Box 990, Simpsonville, South Carolina 29681.

All subsidiaries and divisions indicated by an asterisk (*) each have truck fleets of their own. In addition, James River-Norwalk, Inc. has a truck fleet operating in Darlington, South Carolina. Compensated intercorporate hauling operations will be performed by and between the subsidiaries of James River Corporation.

B. 1. Parent Corporation and address of principal office: Lennox International Inc., 7920 Beltline Road, Dallas, TX 75240–8145.

2. Wholly-owned subsidiaries and divisions which will participate in the operations and States of incorporation:

Name and State of incorporation

(i) Lennox Industries Inc.—Iowa.
(ii) Heatcraft Inc.—Mississippi.
(iii) Lima Register, Division of Lennox Industries—Iowa.

C. 1. Parent corporation and address of principal office Rexnord, Incorporated, 350 North Sunny Slope, Brookfield, Wisconsin 53005.

2. Wholly owned subsidiaries which may participate in our company truck operations, and States of incorporation:

a. Bellofram Corporation, a Massachusetts corporation;

b. Betzdorf Chain Company, Inc., a Wisconsin corporation;

c. CC Liguidating Corporation, a Delaware corporation;

d. Plastic Engineering Corporation, a Michigan corporation;

e. Envirex Inc., a Nevada corporation;

f. Envirex Ltd., a North Dakota corporation;

g. Fairfield Manufacturing Co. Inc., a Indiana corporation;

h. Fife Corporation, a Oklahoma corporation;

i. Instaread Corporation, a Florida corporation;

j. Material Handling Contracting Co., a North Dakota corporation;

k. Micro Pure Systems Inc., a Rhode Island corporation;

l. Nordberg Corporation, a Wisconsin corporation;

m. Rexnord Automation Inc., a Nevada corporation;

n. Applied Technology Services Inc., a Maryland corporation;

o. EMC Controls Inc., a Maryland corporation;

p. Estimation Inc., a Maryland corporation;

q. Propulsion Dynamics Inc., a Rhode Island corporation;

r. TXE Inc., a Texas corporation;

s. Rexnord Chemical Products Inc., a Minnesota corporation;

t. Rexnord Christmastree Ltd., a Nevada corporation;

u. Rexnord Defense System Inc., a Louisiana corporation;

w. Rexnord Discovery Lts., a Nevada corporation;

x. Rexnord Enterprises Ltd., a Wisconsin corporation;

y. Rexnord Exploration Ltd., a Nevada corporation; and

z. Rexnord Industrial Automation, a Wisconsin corporation.

a1. Rexnord International Inc., a Delaware corporation;

a2. Rexnord Puerto Rico Inc., a Nevada corporation;

a3. Rexnord Inc., a Delaware corporation; and

a4. The Thompson Group, a Nevada corporation.

D. 1. Parent corporation and address of principal office: Savannah Foods & Industries, Inc., Post Office Box 339, Savannah, GA 31402.

2. Wholly-owned subsidiaries which will participate in the operations, address of their principal office, and state of incorporation:

	State of incorporation
(a) Everglades Sugar Refinery, Inc., Post Office Box 278, Clewiston, FL 33440.	Florida.
(b) Transales Corporation, Post Office Box 9177, Savannah, GA 31402–0339.	Delaware.
(c) Food Carrier, Inc., Post Office Box 2287, Savannah, GA 31402–2287.	Georgia.
(d) Sunaid of Florida, Inc., Post Office Box 427., Hialeah, FL 33011–0427.	Delaware.
(e) Michigan Sugar Company, Post Office Box 1348, Saginaw, MI 48605.	Michigan.
(f) Savannah Foodservice, Inc., 2218 Enterprise Avenue, Jackson, MI 49201.	Michigan.
(g) Great Lakes Sugar Company, Post Office Box 89, Findlay, OH 45840.	Ohio.
(h) American Fuel Trading Company, Post Office Box 369, Federalsburg, MD 21632.	Delaware.

E. 1. *Parent corporation and address of principal office.* The Somerset Group, Inc., One Virginia Avenue, Indianapolis, Indiana 46204.

2. *Wholly-Owned subsidiaries that will participate in the operations, and State(s) of incorporation.*

(i) Concrete Carriers, Inc., an Indiana corporation, One Virginia Avenue, Indianapolis, Indiana 46204.

Note.—The Somerset Group, Inc. also intends to engage in compensated intercorporate hauling on behalf of the three divisions of The Somerset Group, Inc.:

(i) American Precast Concrete, One Virginia Avenue, Indianapolis, Indiana 46204.

(ii) Span Deck of Indiana, 1030 South Kitley Avenue, Indianapolis, Indiana 46203.

(iii) American Precast Concrete of Ohio, 3400 Jackson Pike, P.O. Box 475, Grove City, Ohio 43123.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13374 Filed 6-12-86;8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data For Use in Study of Traffic Flows To and From Canada

The Commission has received a request from ALK Associates, Inc. on behalf of the Seaboard System Railroad to use the Commission's 1984 Carload Waybill Sample. The only data requested is that found in the Public Use File (defined at 48 FR 40328, September 6, 1983) except that geographically the province of Ontario would be divided into eastern and western sections. This division is requested so that traffic which would tend to move via the Detroit gateway can be divided from traffic that would tend to move by Buffalo. ALK Associates, Inc. states that the division of Ontario will have no effect on railroad confidentiality, since the same set of railroads (CN, CP, CO, CR, and NW) operates in both the eastern and western sections. However, in order to guarantee shipper confidentiality, ALK has agreed to process the file before release to the Seaboard System Railroad to guarantee that there are at least three freight stations in each section of Ontario generating any commodity (STCC). Should there be fewer than three stations, that commodity will be aggregated into higher commodity (STCC) classification until a minimum of three stations is reached.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13376 Filed 6-12-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 11, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer list at the end of each entrying *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *and* the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miese, 202/633-4312

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Application for Registration, Application for Registration Renewal
(4) DEA 225 (Registration, DEA 225a (Renewal)
(5) On occasion (Registration, new applicant), Annually (Renewal)
(6) State or local governments, business or other for-profit, non-profit institutions
(7) 10,000 respondents
(8) 5,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder-395-4814

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Application for Permit To Import Controlled Substances for Domestic and/or Scientific Purposes Pursuant to 21 U.S.C. 952
(4) DEA 357
(5) On Occasion
(6) Businesses or other for-profit. Standard information request for data needed for reports to the United Nations of legitimate traffic on marcotics into the United States and the provide a basis for issuance of an import permit
(7) 165 respondents
(8) 41 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder-395-4815.

Larry E. Miesse,

Clearance Officer Department of Justice.

[FR Doc. 86-13385 Filed 6-12-86; 8:45 am]

BILLING CODE 4410-09-M

Lodging of Consent Decree; Coca Cola Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 20, 1986 a proposed consent decree in *United States* v. *Coca Cola Co.*, Civil Action No. 84-1021, CIV-T-15, was lodged with the United States District Court for the Middle District of Florida. The proposed consent decree provides that Coca Cola shall construct

a wastewater treatment system in accordance with a schedule set forth in the decree; that the company will achieve zero discharge to the environment by May 1987; that the company will comply with interim discharge limitations as set forth in the decree; and that the company will pay a $50,000 civil penalty in settlement of the government's claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Coca Cola,* D.J. Ref. 90–5–1–1–2133.

The proposed decree may be examined at the office of the United States Attorney, 410 Robert Timber Lake Building, 500 Zack Street, Tampa, Florida 33602 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 9th and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–13438 Filed 6–12–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Programs, Final Allocations and Allocation Formula for Program Year 1986, Regular Program and Calendar Year 1986, Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American total allocations, distribution formulas and rationale for Program Year 1986 for regular programs funded under Title IV–A of the Job Training Partnership Act, and for Calendar Year 1986 for Summmer Youth Employment and Training Programs funded under Title II–B of the Job Training Partnership Act.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, 601 D Street NW., Room 6122, Washington, DC 20213; Phone: 202–376–6225.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations and distribution formula for Native American grantees to be funded under Title IV, section 401, and Title II, Part B. The amounts to be distributed are $59,567,000 for Title IV, section 401 for Program Year (PY) 1986 (July 1, 1986–June 30, 1987); and $13,176,511, for Title II, Part B, for the Summer Youth Employment and Training Program (SYEP) for the Summer of Calendar Year 1986.

This information, along with individual grantee planning estimates, was published as a proposal on March 28, 1986, 51 FR 10683. Written comments from the public were invited, but no changes in the allocations were suggested in response. Accordingly, the allocation tables are not being republished in this notice. One respondent questioned the use of the 1980 Census data in the allocation formula, but the Department has no choice other than to continue to use that data, since it is the only source of demographic information on all Native Americans throughout the United States, both on and off the reservations, that is currently available.

For Title IV, section 401, the $59,567,000 figure represents the enacted level of $62,243,000 reduced by a $2,676,000 sequestration effective March 1, 1986, pursuant to Pub. L. 99–177, The Balanced Budget and Emergency Deficit Control Act of 1985.

At 48 FR 40451 (September 7, 1983), DOL stated its policy to include a hold-harmless factor in the allocation of Title IV funds so that no grantee would receive less than 80% of the funds it had received the previous year. It also stated that this methodology would be followed for a period of 3 years, and that thereafter each grantee would receive an allocation based on the direct application of the 1980 Census data without hold-harmless provision. PY 1986 is the first year the the hold-harmless provision is not being applied. The allocation formula is stated in 20 CFR 632.171.

The SYEP, funded under Title II, Part B, is not affected by the Balanced Budget and Emergency Deficit Control Act. However, a hold-harmless formula was applied which results in some grantees receiving less and some more funding than allocated in Calendar Year 1985. No grantee will receive less than 80% of its Calendar Year 1985 SYEP level. This is the last year a hold-harmless provision will apply to JTPA Title II–B funds. The formula for allocating SYEP funds divides the funds among eligible recipients based on the proportion that the number of youths in a recipient's area bears to the total number of youths in all eligible areas.

Statistics on youths, unemployed and poverty-level Native Americans used in the above programs are derived from the Decennial Census of the population, 1980.

Signed at Washington, DC, this 5th day of June 1986.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 86–13316 Filed 6–12–86; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally-Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act.

The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86-1 (Jan. 3, 1986) ..... pp. 64-68.
Georgia:
GA86-3 (Jan. 3, 1986)..... pp. 212-213.
New Hampshire:
NH86-4 (Jan. 3, 1986)..... pp. 571-575.
Pennsylvania:
PA86-1 (Jan. 3, 1986) ..... pp. 799-801.
PA86-2 (Jan. 3, 1986) ..... pp. 804-805.
PA86-4 (Jan. 3, 1986) ..... p. 821.
PA86-7 (Jan. 3, 1986) ..... p. 852.
PA86-17 (Jan. 3, 1986)..... pp. 906-908.
West Virginia:
WV86-2 (Jan. 3, 1986)..... p. 1137.

Volume II

Iowa:
IA86-2 (Jan. 3, 1986) ..... p. 29.
IA86-4 (Jan. 3, 1986) ..... p. 39.
IA86-5 (Jan. 3, 1986) ..... p. 46.
Illinois:
IL86-9 (Jan. 3, 1986) ..... pp. 137-138.
IL86-11 (Jan. 3, 1986) ..... pp. 146-150.
Kansas:
KS86-6 (Jan. 3, 1986)..... pp. 327-328.
New Mexico:
NM86-1 (Jan. 3, 1986)..... pp. 643, 648.
Oklahoma:
OK86-14 (Jan. 3, 1986)..... p. 836.

Volume III

Colorado:
CO86-1 (Jan. 3, 1986)..... p. 98.
CO86-4 (Jan. 3, 1986)..... pp. 375, 378.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 6th day of June 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-13200 Filed 6-12-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting With the State Job Training Coordinating Council Chairs

June 6, 1986.

AGENCY: National Commission for Employment Policy.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a roundtable public meeting of the National Commission for Employment Policy with the State Job Training Coordinating Council Chairs from 13 Western States at the Radisson Hotel, 161 West 600 South, Salt Lake City, Utah.

DATE: Thursday, June 26, 1986, 9:00 a.m. to 5:00 p.m.

Status: The meeting is open to the public.

Matters to be discussed: The participants will discuss the effectiveness of the Job Training Partnership Act (JTPA) within their respective States.

FOR FURTHER INFORMATION, CONTACT: Mr. Robert Mahaffey, Public Information Officer, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Robert Mahaffey of the Commission staff so that appropriate accommodations can be made.

Copies of the Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's offices, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed this 6th day of June 1986.

Scott W. Gordon,

Director.

[FR Doc. 86-13318 Filed 6-12-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289(CH), (ASLBP No. 85-514-02-0T)]

General Public Utilities Nuclear, Three Mile Island Nuclear Station, Unit No. 1, Evidentiary Hearing

June 10, 1986.

Before Administrative Law Judge Morton B. Margulies.

Notice is hereby given that an evidentiary hearing will commence in this proceeding on June 23, 1986, at 9:30 a.m., local time, in the Commonwealth Court, Courtroom No. 2, 5th Floor, South Office Building, Commonwealth Avenue, Harrisburg, Pennsylvania. The hearing will continue through June 27, 1986, and then reconvene on July 1, 1986, all at the same location. Any change in scheduling will be at the direction of the Judge.

The Commission ordered that the hearing be held to determine (1) whether the Atomic Safety and Licensing Appeal Board's condition, in its decision on management-related issues in the Three Mile Island, Unit 1 (TMI-1) Restart Proceeding, barring Charles Husted from supervisory responsibilities insofar as the training of non-licensed personnel, should be vacated, and (2) whether he is barred by concerns about his attitude or integrity from serving as an NRC licensed operator, or a licensed operator instructor or training supervisor.

The public is invited to attend the hearing.

It is so ordered.

Dated at Bethesda, Maryland this 10th day of June 1986.

Morton B. Margulies,

Administrative Law Judge.

[FR Doc. 86-13430 Filed 6-12-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Joint Subcommittees on Occupational and Environmental Protection Systems and Auxiliary Systems; Meeting

The ACRS Joint Subcommittees on Occupational and Environmental Protection and Auxiliary Systems will hold a meeting on June 27, 1986, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, June 27, 1986—8:30 A.M. until the conclusion of business

The Subcommittees will: a) Be briefed by NRR and Region Staff on the status of various control room HVAC systems problems and the control room habitability improvement effort, b) be briefed by the AEOD Staff on the effects of ambient temperature on I&C systems, c) discuss with the Staff their procedures and criteria for reviewing Chilled Water Systems, their "walk-down" of the Chilled Water Systems at Shearon Harris, and the contribution to the risk to safety due to Chilled Water Systems failures based on PRA Studies, and d) discuss with the Staff de minimis environmental radiation levels.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 10, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-13427 Filed 6-12-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on June 25, 1986, at the Westinghouse Research and Development Center, 1310 Beulah Road, Churchill, PA (outskirt of Pittsburgh, PA).

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 25, 1986–8:30 A.M. until the conclusion of business

The Subcommittee will review the status of NDE of cast stainless steel, and changes in steel-making practice.

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangments can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any

changes in schedule, etc., which may have occurred.

Dated: June 9, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-13428 Filed 6-12-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies & Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on June 26, 1986, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 26, 1986–8:30 A.M. until the conclusion of business

The Subcommittee will review the regulatory process as it relates to the June 9, 1985 Davis-Besse event using the Report of the Independent Ad Hoc Group for the Incident (NUREG–1201) as the the basis for the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered durig the balance of the meeting.

The Subcommittee will then hold discussions with the Executive Director of Operations, representatives of the Atomic Safety and Licensing Board Panel, representatives of Toledo Edison Company, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated June 10, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-13429 Filed 6-12-86; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area #2240]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 5, 1986, I find that Allegheny County in the State of Pennsylvania constitutes a disaster loan area because of severe storms and flooding beginning on or about May 30, 1986. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 4, 1986, and for economic injury until the close of business on September 2, 1986, at: Disaster Area 2, Office Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring Street SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates area:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 224006 for physical damage and for economic injury the number is 641200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 6, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-13336 Filed 6-12-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-5-99; Dockets 42064, 36553, and 41467]

Revocation of the Section 401 or 418 Certificates of Flirite, Inc., Profit Airlines, Inc. and Nelson Island Air Service, Inc. d/b/a Executive Charter; Order To Show Cause

Correction

In FR Doc. 86–12657 appearing on page 20570 in the issue of Thursday, June 5, 1986, make the following correction:

In the docket line in the heading and in the second line of the **"ACTION"** caption, the Order number should have read "86–5–99".

BILLING CODE 1505-01-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 151—Airborne Microwave Landing System Area Navigation Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System Area Navigation Equipment to be held on July 9–11, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Twelfth Meeting Minutes; (3) Review and Discuss SC–137 and EUROCAE WG–27 Activities; (4) Overview of MOPS Test Sections; (5) Technical Presentations; (6) Reports of the Operations Working Group and Accuracy/Display Working Group; (7) Review of the Seventh Draft MOPS, inlcuding Task Assignments and Draft Comments; (8) Working Group Sessions; (9) In Plenary: Working Group Progress and Task Assignments; (10) Other Business; and (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500,

Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 6, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–13333 Filed 6–12–86; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 6, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

New

1. Department of Veterans Benefits
2. Loan Guaranty Funding Fee Transmittal
3. VA Form 26–8986
4. On occasion
5. Individuals or households; Businesses or other for-profit
6. 300,000 responses
7. 50,000 hours
8. Not applicable

Extension

1. Department of Medicine and Surgery
2. State Home Report and Statement of Federal Aid Claimed
3. VA Form 10–5588
4. Monthly
5. State or local governments
6. 588 responses
7. 129 hours
8. Not applicable

[FR Doc. 86–13240 Filed 6–12–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 114
Friday, June 13, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 18, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC

STATUS: Open to the Public

MATTERS TO BE CONSIDERED:

Asbestos in Consumer Products: Options

The Commission will consider options to reduce consumer exposure to asbestos in selected products.

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.

June 11, 1986.

[FR Doc. 86–13525 Filed 6–11–86; 3:58 pm]

BILLING CODE 6355–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 19, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the Public

MATTERS TO BE CONSIDERED:

1. FY'88 Planning Issues/Priority Projects/ Budget Format

The Commission will consider fiscal year 1988 planning issues, fiscal year 1988 priority projects and budget format.

Closed to the Public

2. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

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.

June 11, 1986.

[FR Doc. 86–13526 Filed 6–11–86; 3:58 pm]

BILLING CODE 6355–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 20730, dated June 6, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time), Monday June 16, 1986.

CHANGE IN THE MEETING: The following matter has been added to the closed portion of the meeting. "Proposed Amicus Curiae Participation"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Office Executive Secretariat, at (202) 634–6748.

Dated: June 11, 1986.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

[FR Doc. 86–13493 Filed 6–11–86; 3:07 pm]

BILLING CODE 6750–06–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 PM (Eastern Time), Monday, June 23, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement in a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: June 11, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–13494 Filed 6–11–86; 3:07 pm]

BILLING CODE 6750–06–M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 19657 Dated May 30, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 AM (Eastern Time) Tuesday, June 10, 1986.

CHANGE IN THE MEETING: Cancellation of Meeting.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: June 5, 1986.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 86–13495 Filed 6–11–86; 3:07 pm]

BILLING CODE 6750–06–M

6

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 19656 Dated May 30, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 PM (Eastern Time) Monday, June 9, 1986.

CHANGE IN THE MEETING: The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: June 6, 1986.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 86-13496 Filed 6-11-86; 3:08 pm]

BILLING CODE 6750-06-M

7

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 20731, June 6, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 10, 1986.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-4(B)—CP86-277-000, CP86-306-000, CP86-308-000, CP86-318-000, CP86-336-000, CP86-358-000, CP86-359-000, CP86-365-000, CP86-392-000, CP86-400-000, CP86-408-000, CP86-409-000, and CP86-432-000, Southern Natural Gas Company, CP86-366-000, CP86-382-000 and CP86-401-000, Southern Natural Gas Company and South Georgia Natural Gas Company.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13468 Filed 6-11-86; 11:11 am]

BILLING CODE 6717-02-M

8

NATIONAL SCIENCE BOARD

DATE AND TIME:

June 19, 1986, 8:00 a.m.–12-00 noon, Open Session
June 19, 1986, 2:00–6-00 p.m., Open Session
June 20, 1986, 8:30–9-00 a.m., Closed Session
June 20, 1986, 9:00–11-00 a.m., Open Session

PLACE: National Science Foundation, Washington, DC

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED JUNE 19–20:

Thursday, June 19

Open Session (8:00 a.m.–12:00 Noon)

1. Introductory Remarks
2. NSF Overview
3. Directorate Issues, Plans and Priorities
   a. Mathematical and Physical Sciences
   b. Biological, Behavioral & Social Sciences
   c. Engineering

Open Session (2:00–6:00 p.m.)

   d. Geosciences
   e. Science and Engineering Education
   f. Scientific, Technological, and International Affairs
   g. Computer and Information Science and Engineering
   h. Undergraduate Activities
   i. Information Charts—Support by field of Science

Friday, June 20

Closed Session (8:30–9:00 a.m.)

4. Minutes—May 1986 Meeting
5. NSB and NSF Staff Nominees

Open session (9:00–11:00 a.m.)

6. Chairman's Report (Minutes—May 1986 Meeting)
7. Strategic Summary and FY 1988 Focus

Thomas Ubois,

Executive Officer.

[FR Doc. 86-13423 Filed 6-11-86; 9:20 am]

BILLING CODE 7555-01-M

federal register

Friday
June 13, 1986

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Notification Requirements; Reportable Quantity Adjustments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[FRL 2940-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Notification Requirements; Reportable Quantity Adjustments; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by expanding the Toxicity Characteristic to include additional chemicals and by introducing a new extraction procedure to be used in the Toxicity Characteristic. EPA is also proposing to incorporate the changes made pursuant to this rule into the lists of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. Today's action is necessary both to define further the scope of the hazardous waste regulations and to meet a specific mandate of the Hazardous and Solid Waste Amendments of 1984 (HSWA). This amendment will bring additional wastes under regulatory control, providing for further protection of public health and the environment.

DATES: Comments on this proposed rule must be submitted on or before August 12, 1986. A public hearing has been scheduled for July 14, 1986 at 9:30 a.m., in Washington DC. Requests to present oral testimony must be received 10 days before each public hearing.

ADDRESSES: One original and three copies of all comments on this proposed rule, identified by the docket number F-86-TC-FFFFF, should be sent to the following address: EPA RCRA Docket (S-212), U.S. Environmental Protection Agency (WH-562), 401 M Street SW., Washington DC 20460. The EPA RCRA docket is located in the sub-basement area at the above address, and is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at 475-9327 or Kate Blow at 382-4675. A maximum of 50 pages of material may be copied from any one regulatory docket at no cost. Additional copies cost $.20/page. Documents identified in Section IX of the Supplementary Information section of this preamble are available in the docket. The public hearing will be held on July 14, 1986 at the following location: Vista International Hotel, 1400 M Street, NW., Washington, DC 20460. The hearing will begin at 9:30 a.m., with registration at 9:00 a.m., and will run until 4:00 p.m. unless concluded earlier. Anyone wishing to make a statement at the hearing should notify, in writing, Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 toll-free or (202) 382-3000.

For information on specific aspects of this proposed rule contact: Todd A. Kimmell, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA was charged with identifying those wastes which pose a hazard to human health and the environment if improperly managed. It further called on EPA to identify such wastes through development of lists of hazardous waste and through characteristics of hazardous wastes. These two means of identifying hazardous wastes employ fundamentally different approaches.

To list a waste as hazardous, EPA conducts a detailed industry study, placing particular emphasis on the hazardous constituents contained in specific wastes from the industry being studied (See 40 CFR 261.11(a)(3)). This process involves literature reviews, engineering analyses, surveys and questionnaires, and site visits, including sampling and analysis of wastes. As such, the listing process may require from 1 to 3 years or more, depending on the complexity of the industry being investigated.

The process of identifying wastes as "hazardous" by reason of a characteristic is fundamentally different. Characteristics are those properties which, if exhibited by a waste, identify the waste as a hazardous waste. It is a generic process whereby EPA identifies properties that might be possessed by a waste which would cause the waste, *if improperly managed*, to cause harm to human health or the environment. The Agency then determines a reasonable mechanism by which such harm might occur, develops a quantitative model to identify hazard levels, and whenever possible, test methods for use in determining if a specific waste possesses hazardous levels of the property. Once EPA promulgates a characteristic it becomes self implementing. Any solid waste which exhibits the characteristic is a hazardous waste, and when treated so that it no longer exhibits the characteristic, is no longer subject to RCRA regulation as a hazardous waste.

Solid wastes which do not exhibit a characteristic, however, are not necessarily non-hazardous. Characteristics are established at levels at which there is a high degree of certainty that a waste which exhibits these properties needs to be managed in a controlled manner (i.e., is a hazardous waste). The Agency realizes that not all wastes which exhibit properties at levels below the characteristic are safe for disposal as nonhazardous waste. The Agency may therefore, upon

evaluation of specific wastes from specific industries, decide to list such wastes as hazardous based on the criteria defined in 40 CFR 261.11(a)(3). This reflects the Agency's philosophy, first articulated in May of 1980, that the characteristics define broad classes of wastes that are clearly hazardous, while the listing process defines some wastes that may pass the characteristic, but are nonetheless hazardous wastes (45 FR 33111).

In carrying out the RCRA mandate, EPA identified a number of characteristics which, if exhibited by a waste, would indicate that the waste is a hazardous waste and should be managed as such. One of these characteristics, the Extraction Procedure (EP) Toxicity Characteristic (EPTC) (40 CFR 261.24), was intended to identify wastes which pose a hazard due to their potential to leach significant concentrations of specific toxic species.

The EPTC is the only characteristic which directly relates to the toxicity of a waste. This characteristic entails use of a leaching test, the EP, which is used in determining if an unacceptably high level of ground water contamination might result from improper waste management. The EP results in a liquid extract which is analyzed for eight metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver), four insecticides (endrin, lindane, methoxychlor and toxaphene), and two herbicides (2,4-D and 2,4,5-TP). Regulatory thresholds were established for these 14 species taking into account the attenuation and dilution expected to occur during migration of the leachate to the ground water, through use of a generic dilution/attenuation factor of 100 (Ref. 26).

At the time of promulgation, EPA recognized two major shortcomings of the EPTC. The first was that the only benchmarks for establishing toxicity levels of specific chemicals, which were both scientifically recognized and which addressed chronic exposure, were the National Interim Primary Drinking Water Standards (DWS). The Agency considered incorporating other standards, such as the Water Quality Criteria that were being developed under the Clean Water Act. Preliminary drafts of these criteria, however, received substantial negative comment from the scientific community. The Agency thus put off expansion of the EPTC pending development of acceptable standards. The second shortcoming was that the EP was optimized to evaluate the leaching of elemental rather than organic constituents. Hence, the leaching of organics needed to be investigated.

In addition to addressing the leaching of organics, EPA believes that other aspects of the EPTC can be improved. For example, ground water modeling and knowledge of leaching and fate and transport mechanisms have advanced to the point that mathematical models can be used to identify species-specific dilution/attenuation factors, rather than relying on the generic 100 times level now employed in the EPTC. Also, the EP protocol is known to suffer a number of operational shortcomings that, while not critical, warrant attention. These shortcomings and their solutions are detailed in further sections of this preamble.

Congress also recognized the shortcomings of the EPTC, and amended RCRA in 1984 (section 3001 (g) and (h)), directing EPA to make changes in the EP to insure that it accurately predicts leaching potential, and to identify additional characteristics of hazardous waste, including measures or indicators of toxicity. EPA intends to address both of these mandates through expansion of the EPTC to include additional chemicals, and through the introduction of an improved leaching test to replace the current EP protocol.

EPA is also planning to add another facet to the hazardous waste characteristics. Specifically, EPA is working on a mechanism by which to identify wastes as hazardous by virtue of their ability to mobilize other toxicants. This component would primarily affect solvent-containing wastes, and will complement a regulation EPA promulgated on December 31, 1985 that redefined the universe of solvents considered listed hazardous wastes to include certain solvent mixtures (50 FR 53315). EPA indicated that this was an interim measure which would be modified or superseded when further work was completed. More detail regarding the approach the Agency is considering is provided in section II(E).

EPA is today proposing to amend the Extraction Procedure Toxicity Characteristic by (1) expanding the characteristic to include 38 additional compounds, (2) applying compound-specific dilution/attenuation factors generated from a ground water transport model, and (3) introducing a second generation leaching procedure, the Toxicity Characteristic Leaching Procedure (TCLP), that has been developed to address the mobility of both organic and inorganic compounds, and to solve the operational problems of the EP protocol.

It is important to point out that while this proposed rule fulfills the Congressional mandate to add additional characteristics of hazardous waste, considerably more work is now underway within EPA to look at additional constituents that could and should be added to the proposed rule, and to explore other characteristics that will deal with toxicity.

On January 14, 1986 (51 FR 1602), the Agency proposed the framework for a regulatory program to implement the congressionally mandated land disposal prohibitions. The action proposed procedures to establish treatment standards for hazardous waste and procedures by which EPA will determine whether to allow continued land disposal of specific hazardous wastes.

In implementing these procedures, the Agency has proposed to employ the TCLP to estimate the leaching hazard posed by waste placed in Subtitle C facilities. The same subsurface transport model is used in both the land disposal regulation and this proposed regulation. However, minor modifications to account for disposal in a non-hazardous versus a hazardous waste landfill have been made in the transport equation for use in this proposed rule. In addition, different risk levels are used to establish the regulatory level for carcinogens, and a different confidence interval for the ground water transport simulation is used to establish the dilution/attenuation factors. However, to the extent that commenters have provided us with their views on the model either in the context of the land disposal restrictions program or its delisting programs, those comments need only be referenced in response to this proposed rule. More information on the differences between the models is provided in Section V of this preamble.

II. Development to Toxicity Characteristic

A. Introduction

In establishing a scientifically justifiable approach for arriving at threshold concentrations, EPA wanted to assure a high degree of confidence that a waste which releases toxicants at concentrations above the regulatory threshold level would pose a hazard to human health.

The existing EPTC uses the National Interim Primary Drinking Water Standards (DWS) as toxicity thresholds for individual pollutants, and combines these with a generic dilution/attenuation factor (100 times) to yield the regulatory threshold. The new

approach, described below, uses chronic toxicity reference levels, combined with a compound-specific dilution/attenuation factor (derived from application of a ground water transport equation), to calculate the regulatory level concentrations for individual toxicants.

B. Chronic Toxicity Reference levels

Implementation of the Toxicity Characteristic level setting approach described below, requires the initial input of a toxicity limit to establish a regulatory level for each contaminant. Limits set for protection against chronic toxicity effects are the reference standard of choice since this level will usually be protective for both chronic and acute effects. The first step in developing regulatory levels is therefore the development of a measure of "acceptable" chronic exposure for individual toxicants in drinking water.

EPA, under other statutory mandates, has investigated the adverse health effects due to specific chemicals with a view toward controlling exposure through different media. Human health criteria and standards have been proposed or promulgated for certain substances in particular media. Since these have received Agency and public review and evaluation, EPA is proposing to use such standards as the starting point for the back calculation model, where such standards are available. EPA used the DWS for the 8 elements and 6 pesticides as the basis of the Extraction Procedure Toxicity Characteristic.

Drinking water standards are based upon toxicity, treatment technologies, costs, and other feasibility factors such as availablity of analytical methods. In developing DWS's, the intital step is the identification of non-enforceable health limits. The assessment process for establishing these health goals includes evaluation of the quality and weight-of-evidence of supporting toxicological studies, absorption rates of specific toxicants, the possibility that a compound or element is nutritionally essential at certain levels, route of exposure, and exposure medium apportionment.

For non-carcinogens, these health limits are denoted as Reference Doses (RfD's). The RfD is an estimate of the daily dose of a substance which will result in no adverse effect even after a lifetime of such exposure. It is thus a chronic toxicity limit. The establishment of a chronic toxicity reference level for carcinogens requires setting a specific risk level which is then used to calculate the Risk Specific Dose (RSD). The RSD is the daily dose of a carcinogen over a lifetime which will result in an incidence of cancer equal to the specific risk level. An RSD established at the 10^{-5} risk level translates to a probability of one in one hundred thousand that an individual might contract some form of cancer in his or her lifetime.

In developing toxicity levels for carcinogens, EPA is further proposing a weight-of-evidence approach which involves categorizing carcinogens according to the quality and adequacy of the supporting toxicological studies. This approach was proposed by EPA in its Carcinogen Risk Assessment guidelines published in the Federal Register on November 23, 1984 (49 FR 46294).

In order to account for toxicant exposure from other sources (i.e., air and food), EPA is also proposing to limit the RfD value to some fraction, as is done in developing drinking water standards. The fraction of the toxicity level used in these standards is compound-specific, and is apportioned according to exposure assessment data, if adequate data exist, or by use of an arbitrary value of 20 percent if adequate exposure assessment data do not exist. EPA is proposing a similar approach for the Toxicity Characteristic.

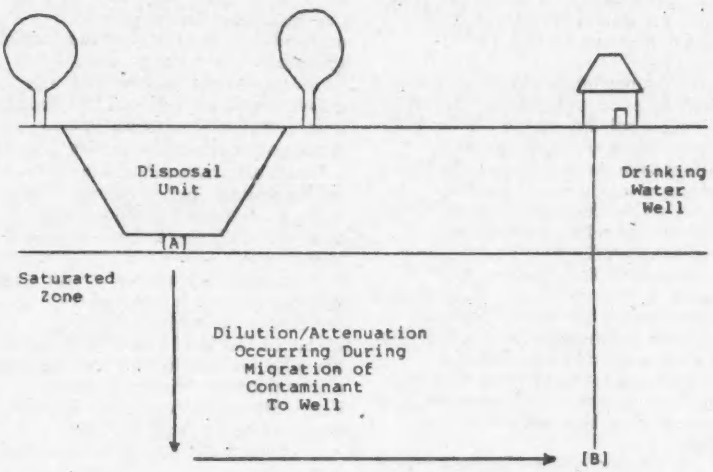
Note, however, that EPA is not proposing this approach for the carcinogens, as it appears that a small reduction in the RSD would still be well within the margin of uncertainty of the estimated RSD. Rather, EPA is proposing to use 100 percent of the RSD value. Section VIII(A) of this preamble provides detailed information as to the identification of chronic toxicity reference levels.

One area that the Agency solicits comment on is whether, as an alternative to using the DWS's, the Agency should consider using the RfD or RSD values as the starting point for the back calculation model, even when DWS's are available.

C. Dilution/Attenuation Factor

After a toxicity level has been identified, the degree of attenuation and dilution that a compound is expected to undergo during transport through the ground water to an underground drinking water source is determined. The ground-water transport equation EPA is intending to use to estimate dilution and attenuation, estimates the reduction in toxicant concentration that would occur as toxicants are transported in ground water over a specified distance from the disposal unit to the point of exposure (i.e., drinking water well), as depicted in the following figure (Figure 1):

Figure 1: Illustration of Dilution/Attenuation



[A] Refers to the concentration of the contaminant in the leachate at the bottom of the disposal unit.

[B] Refers to the concentration of the contaminant in the drinking water well, which is calculated using a ground water transport equation, and is expected to be lower than the concentration at [A] due to attenuation and dilution.

This equation relies on compound specific hydrolysis and soil absorption data, coupled with parameters describing a generic underground environment (e.g., ground water flow rate, soil porosity, ground water pH), to calculate the degree of attenuation and dilution a compound would be expected to undergo as it migrates to an underground drinking water source. Values for environmental parameters have been selected based on review of subsurface geological conditions at existing landfills across the continental United States. Boundary conditions and interrelationships between the above parameters have been established based on a sensitivity and an uncertainty analysis.

Originally, EPA had also hoped to develop dilution/attenuation factors for metal species through use of a second model, since these species generally behave differently in the ground water environment than do the organic compounds. Unfortunately, this model could not be fully developed in time for today's proposal. Accordingly, while EPA is continuing to work on modeling metal transport, EPA is retaining the present EP Toxicity Characteristic levels for the elemental toxicants.

Details of the ground water transport equation to be used for organic compounds are provided in section VIII(B). Note that in the **Federal Register** of January 14, 1986, the Agency proposed to use the same basic ground water transport equation for use in the Land Disposal Restrictions Rule (51 FR 1602). The proposed Land Disposal Restrictions Rule equation, however, contains minor differences to account for the additional engineering controls (e.g., landfill caps), required of Subtitle C hazardous waste facilities, and the higher standard of confidence required under HSWA for determining that a hazardous waste is suitable for land disposal. As noted previously, different risk levels are used to establish the characteristic regulatory threshold for carcinogens, and a different confidence interval is used for the ground water transport simulation to establish the dilution/attenuation factors. While section VIII(B) provides additional information concerning the equation proposed for use in the Toxicity Characteristic, considerably more detail concerning this equation is provided in the preamble section to the proposed Land Disposal Restrictions Rule (51 FR 1602, January 14, 1986).

Since many aspects of the ground water transport equation are similar between the two rules, commenters need not repeat relevant comments that have already been made in response to the Land Disposal Restrictions Rule. These earlier comments may be referenced, although all relevant comments will be considered in developing the Toxicity Characteristic final rule. Comment specific to EPA's use of the equation for this rule, should however, be submitted.

D. Proposed Toxicants and Regulatory Levels

In order to establish a Toxicity Characteristic regulatory level for individual compounds, adequate and verified data must exist for EPA to (1) identify a toxicity level (i.e., DWS, RfD, or RSD), and (2) calculate a dilution/attenuation factor through application of the ground water transport equation. As discussed previously, EPA will retain the 100 times factor used in the current EP Toxicity Characteristic for the elemental drinking water toxicants. Due to the Agency's continuing efforts to develop an adequate ground water transport equation for the metals, addition of elemental and anionic toxicants to the Toxicity Characteristic is being delayed. The Agency expects to propose Toxicity Characteristic thresholds for nickel and thallium during the period between proposal and promulgation of this rule.

In selecting additional organic toxicants to incorporate in today's proposal, the Agency identified those Appendix VIII compounds for which there existed a promulgated or proposed drinking water standard, or an RfD or RSD. The compounds identified as a result of these efforts were then examined to determine if adequate fate and transport data were available to establish a compound-specific dilution/attenuation factor.

These efforts have resulted in the identification of a total of 52 compounds for the Toxicity Characteristic. This includes the existing 14 EPTC compounds, and 38 compounds whose thresholds are driven by their toxicity, as shown in the following table (Table 1):

TABLE 1: PROPOSED TOXICITY CHARACTERISTIC CONTAMINANTS AND REGULATORY LEVELS

HWNO	Contaminants	CASNO	Regulatory level (mg/l)
D018	Acrylonitrile	107-13-1	5.0
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100
D019	Benzene	71-43-2	0.07
D020	Bis(2-chloroethyl) ether.	111-44-4	0.05
D006	Cadmium	7440-43-9	1.0
D021	Carbon disulfide	75-15-0	14.4
D022	Carbon tetrachloride	56-23-5	0.07
D023	Chlordane	57-74-9	0.03
D024	Chlorobenzene	108-90-7	1.4
D025	Chloroform	67-66-3	0.07
D007	Chromium	1333-82-0	5.0
D026	o-Cresol	95-48-7	10.0
D027	m-Cresol	108-39-4	10.0
D028	p-Cresol	106-44-5	10.0
D016	2,4-D	94-75-7	1.4
D029	1,2-Dichlorobenzene	95-50-1	4.3
D030	1,4-Dichlorobenzene	106-46-7	10.8
D031	1,2-Dichloroethane	107-06-2	0.40
D032	1,1-Dichloroethylene	75-35-4	0.1
D033	2,4-Dinitrotoluene	121-14-2	0.13
D012	Endrin	72-20-8	0.003
D034	Heptachlor (and its hydroxide).	76-44-2	0.001
D035	Hexachlorobenzene	118-74-1	0.13
D036	Hexachlorobutadiene.	87-68-3	0.72
D037	Hexachloroethane	67-72-1	4.3
D038	Isobutanol	78-83-1	36
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.06
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	1.4
D039	Methylene chloride	75-09-2	8.6
D040	Methyl ethyl ketone	78-93-3	7.2
D041	Nitrobenzene	98-95-3	0.13
D042	Pentachlorophenol	87-86-5	3.6
D043	Phenol	108-95-2	14.4
D044	Pyridine	110-86-1	5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D045	1,1,1,2-Tetrachloroethane.	630-20-6	10.0
D046	1,1,2,2-Tetrachloroethane.	79-34-5	1.3
D047	Tetrachloroethylene	127-18-4	0.1
D048	2,3,4,6-Tetrachlorophenol.	58-90-2	1.5
D049	Toluene	108-88-3	14.4
D015	Toxaphene	8001-35-2	0.07
D050	1,1,1-Trichloroethane.	71-55-6	30
D051	1,1,2-Trichloroethane.	79-00-5	1.2
D052	Trichloroethylene	79-01-6	0.07
D053	2,4,5-Trichlorophenol.	95-95-4	5.8
D054	2,4,6-Trichlorophenol.	88-06-2	0.30
D017	2,4,5-TP (Silvex)	93-76-5	0.14
D055	Vinyl chloride	75-01-4	0.05

There is one group of chemicals for which the Agency considers use of the health criteria/ground water transport approach to setting threshold concentrations as being inappropriate in some cases. These are solvents. Solvents need to be managed in a controlled manner not only because of inherent toxicity, but also because they can mobilize hazardous constituents from codisposed non-hazardous waste. Since solvents exhibit this property, the Agency is working to identify such wastes through use of a solvent override.

The Agency intends to set regulatory levels for solvents based on the total amount of solvent observed in the TCLP extract. Thus, wastes whose TCLP extract contains more than a specified amount of total solvent would be identified as a hazardous waste even if none of the health criteria based thresholds for the individual solvents are exceeded. The Agency is also exploring the possibility of developing a solvent power test which would be designed to determine the actual ability of a waste to mobilize hazardous constitutents for non-hazardous wastes. The Agency solicits ideas, data and comments on these and other approaches.

The next section presents a discussion regarding some of the analytical constraints EPA faced in establishing regulatory levels. Section VIII(C) provides tables presenting each compound and the data that EPA has used to calculate the regulatory level. EPA anticipates that the list of toxicants to be included in the Toxicity Characteristic will be periodically expanded as more information on the Appendix VIII compounds is developed.

E. Analytical Constraints

As illustrated in Table 1 (and further in section VIII(C)), the regulatory levels for the proposed compounds span about 5 orders of magnitude (i.e., from the low parts per billion to 100 parts per million). This is not so much a function of the individual dilution/attenuation factors, but rather due to the great range in toxicity levels of the individual toxicants. Since many of the toxicity levels for the carcinogens (and some of the non-carcinogens) (see section VIII(A)) are very low, depending on the magnitude of the dilution/attenuation factor, the calculated level will also be very low. This presents a problem for the Agency since some of these calculated thresholds are below the analytical level measurable using currently available methodology. This affects 7 of the compounds (See section VIII(C)).

EPA believes that the appropriate way to deal with this problem is to establish technology based regulatory levels.[1] The lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions is the quantitation limit. The quantitation limit thus represents the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions. The quantitation limit is determined through interlaboratory studies, such as performance evaluation studies.

If data are unavailable from interlaboratory studies, quantitation limits are estimated based upon the detection limits and an estimate of a higher level which would represent a practical and routinely achievable level with relatively high certainty that the reported value is reliable. EPA estimated this level to be 5 to 10 times the detection limit in their final rule on National Interim Primary Drinking Water Standards for Volatile Synthetic Organic Chemicals (50 FR 46880, November 13, 1985). EPA believes that setting the quantitation limit at 5 times the detection limit is a fair expectation for most regulatory and commercial laboratories. Public comment is specifically requested on the use of 5 times the detection limit as a general rule as to what levels can be expected to be measured routinely by commercial laboratories with reliability.

Use of either detection limits or quantitation limits would allow for regulatory levels that fall below the analytically measurable level to be periodically updated as advances are made in analytical methodology. EPA is proposing the use of the quantitation limits because the determination that a compound is present (in the extract above a specified value) conclusively demonstrates the presence of a hazard. EPA is seeking comment, however, on both approaches.

The tables in section VIII(C) indicate the quantitation limits for each of the elements and compounds, as well as the appropriate EPA SW-846 analytical method numbers (Ref. 27). (Analytical

[1] Such levels could be set at the analytical detection limit or, as an alternative, they could be set at the limits of accurate quantitation (i.e., quantitation limit). In general, EPA defines the method detection limit as the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the true value is greater than zero. The specifications of such a concentration are limited by the fact that detection limits are a variable affected by the performance of a given measurement system. Detection limits are not necessarily reproducible over time in a given laboratory, even when the same analytical procedures, instrumentation and sample matrix are used. Differences between detection and quantitation limits are expected since the detection limits represent the lowest achievable level under ideal laboratory conditions, whereas the quantitation limit represents the lowest achievable level under practical and routine laboratory conditions.

methods for the Toxicity Characteristic compounds are discussed more fully in section IV(D) of this preamble.) The quantitation limits used are based on the presence of these compounds in a water matrix. Since TCLP extracts would also be aqueous in nature, EPA is proposing to use the quantitation limit as observed in water. EPA recognizes, however, that while these quantitation limits would be attainable for most wastes, other wastes will produce an extract that is qualitatively different, and may not allow quantitation to the same low level as water. This, however, will be waste specific and difficult to predict beforehand. While specifying a higher quantitation limit is an option, EPA is reluctant to do so due to the degree of environmental protection that might be sacrificed. EPA is, however, working to determine actual quantitation limits on real wastes, which may result in increases in the quantitation limit, and the corresponding regulatory level, for some of the contaminants. EPA solicits comments and suggestions on how to deal with this issue.

Three of the phenolic compounds that are included in today's proposal, ortho-, meta-, and para-cresol, also pose an analytical problem. Specifically, meta- and para-cresol cannot be analytically separated using readily available techniques. In order to overcome this problem, and given that these isomers all act in an additive manner, the Agency is proposing to establish a single level for total o-, m- and p-cresol.

Public comment and information on all aspects of the issues presented in this section are requested to assist EPA in making a final choice of analytical methods and the specific performance requirements in the final rule. Supporting data/information is requested for any comments provided. Specifically, public comment is requested on the following questions:

- Are the proposed analytical methods technically and economically available (see section IV(D) of this preamble)?
- What is the precision/accuracy of the analytical methods at the proposed quantitation levels?
- Are there sufficient qualified laboratories capable of measuring at proposed quantitation levels?

III. Development of the Leaching Procedure

A. Introduction

The Extraction Procedure (EP) was designed to simulate the leaching that would result when a solid waste is co-disposed with municipal wastes in a sanitary landfill. The EP was intended to be a first order approximation of the leaching action of the low molecular weight carboxylic acids generated in an actively decomposing sanitary landfill. Acetic acid, one of the more dominant carboxylic acids present in municipal waste leachate, is added to deionized distilled water to make up the extracting medium used in the EP. The acetic acid models primarily the leaching of metals from an industrial waste. The impetus behind development of the Toxicity Characteristic Leaching Procedure (TCLP) was the need also to address the leaching of organic compounds (Ref. 26).

In addition, EPA believes that the EP protocol can be improved in certain areas. For example, the EP involves continual pH adjustment (titration) with 0.5 N acetic acid to a pH of 5.0±0.2. This can involve more than 6 hours of operator attention and can be difficult for some waste types, particularly oily wastes. In developing the TCLP, EPA felt that elimination of the need for continual pH adjustment would be a desirable improvement. As another example, the EP involves separating the initial liquid from the solid phase of the waste, as well as separation of the liquid (extract) derived from the leaching test. These steps, involving pressure filtration through a 0.45 um filter, can be difficult and time consuming for certain waste types, and warrant simplification. In addition, other minor changes in the EP protocol, such as shortening the duration of the test and accounting for the loss of waste materials to the sidewalls of sample containers, were felt to be of use in lowering the cost of the test and improving the overall precision of the method. Thus, the Agency believes that development of a second generation extraction procedure was of value even if the EP were found to be acceptable for organics.

B. Objectives

EPA's intent, then, was to develop an improved leaching test method suitable for use in evaluating wastes containing organic toxicants. It is important to note that the purpose of the EP, as well as this new method, is as a means of determining whether a waste, if mismanaged, has the potential to pose a significant hazard to human health or the environment due to its propensity to leach toxic compounds. EPA believes that the EP adequately accomplished this goal for the currently regulated toxicants.

When the EP was developed, the Agency had little empirical data upon which to base its assumptions regarding accuracy (Ref. 26). Hence, while the few data that were available regarding accuracy were used in developing the EP, it was primarily based on what was reasonable, as well as what would provide a reproducible (precise) test protocol. While improved reproducibility is one objective of the TCLP, the major objective was to accurately model the mobility of constituents from wastes, particularly organic constituents. Other objectives were that the test be relatively inexpensive to conduct; that, if possible, it yield an extract amenable to evaluation with biological toxicity tests; and that it also model the mobility of inorganic species. This last objective would permit EPA to expand the toxicity characteristic to encompass organics, yet require only one leaching test for both organics and inorganics.

C. Disposal Environment and Model

The specific environment modeled by both the current EP and the TCLP is co-disposal of industrial waste with refuse in a sanitary landfill. The Agency's concern was that potentially hazardous waste, if not brought under the control of the RCRA hazardous waste system, might be sent to sanitary landfills, with a resulting high level of leaching activity. This concern has not changed. Although the Agency believes that fewer industrial solid wastes are being disposed in this manner as compared to a few years ago, the Agency also believes that the co-disposal scenario still represents a reasonable worst-case mismanagement scenario. In addition, the Agency believes that the predicted degree of contaminant migration, as indicated by the TCLP, could reasonably occur in the course of other types of land management of wastes (see section VIII(D)).

Hence, the experiments used to develop the TCLP were set up to conform as closely as possible with the co-disposal model. Specific features of this model were that the landfill is composed of 5 percent industrial solid waste and 95 percent municipal waste, and that the character of the leaching fluid that the waste will be exposed to is predominantly a function of the decomposing refuse in the landfill. In expanding the Toxicity Characteristic, the models and assumptions used in developing the EP have been retained.

D. Leaching Procedure

The work undertaken to develop and evaluate the new leaching test was carried out in three phases, and involved 11 wastes and close to 100 organic and inorganic components which leached from these wastes.

Briefly, the research involved leaching these wastes in a pilot-scale field facility with sanitary landfill leachate, measuring the concentration of the compounds which leached from the wastes, and attempting to duplicate these concentrations in a laboratory test, the TCLP (Ref. 6 and 7).

A TCLP has ben developed as a result of this work. EPA believes that this test method is reasonably accurate in terms of modeling a field-scale co-disposal scenario for both organics and inorganics. In addition, it appears that many of the operational problems associated with the EP protocol have been overcome in the process of developing the TCLP. The test has also been subjected to ruggedness and precision evaluations, and a limited multi-laboratory collaborative evaluation, and is currently being evaluated in a more comprehensive collaborative evaluation.

Section VIII(D) of this preamble provides detailed information with respect to the TCLP development and evaluation program. The regulation section provides the actual TCLP protocol, as Appendix II to Part 261. A more detailed discussion pertaining to the TCLP is provided in a background document that EPA has prepared (Ref. 33).

E. Leaching Procedure Issues

In an effort to identify and resolve any potential problems associated with the TCLP prior to proposal, and also to inform the public of EPA's activities in this area, EPA held a number of meetings at which various aspects of the procedure were reviewed and draft procedures circulated. These included public discussions at meetings of the Association of Official Analytical Chemists and the American Society for Testing and Materials (ASTM).

As a result of these meetings and as a result of the Agency's own efforts in these areas, a number of issues have been identified and some minor changes to the TCLP protocol have also been made. Following is a discussion of these issues, and how they have been addressed in the proposed TCLP.

1. Overall Issues

a. *Accuracy of TCLP.* As indicated previously, EPA was directed by the HSWA to make the EP more accurate. EPA's experimental program to develop the TCLP was intended to provide an accurate extraction method, in terms of ability to model a field co-disposal situation. One of the issues associated with the TCLP is whether the method is adequately accurate in this respect.

In an effort to better quantify how well the TCLP compares to the field model, the distributions of the actual and absolute percent differences between concentrations observed in the field model and those observed in the acetate buffer system chosen for the TCLP (see section VIII(D)), have been examined. Results of these comparisons indicate that roughly half of the 95 individual target compounds (from the 11 wastes examined in both Phases I and II), were within −32 percent and +76 percent of their respective field lysimeter target concentrations. Roughly three-fourths of the 95 individual target compounds were within −80 percent and +86 percent of their respective field lysimeter target concentrations (Ref. 25).

The standard deviation of the total distribution (which is skewed) in this case is 182 percent. These preliminary numbers indicate that the acetate buffer system duplicates field lysimeter target concentrations for approximately three-fourths of the target compounds within one standard deviation of the distribution. This is particularly significant since the laboratory test duration is 18 hours, whereas the field lysimeter experiments were run for approximately 3 months. EPA believes that the accuracy of the TCLP is adequate in terms of indicating the potential for wastes to pose a hazard if mismanaged.

b. Use of TCLP for sewage sludge disposal. EPA expects to propose in September 1986 sewage sludge management standards under Section 405(d) of the Clean Water Act. Once the Section 405(d) standards are promulgated, EPA is considering exempting sewage sludge from RCRA regulation. The section 405(d) standards will tailor EPA's control strategy to the management of specific risks to human health and the environment from each of the sludge use and disposal practices. The Agency solicits comments on this potential approach to regulating sewage sludge.

c. Extent of experimentation. Another issue related to accuracy is whether EPA has examined enough contaminants and waste types in its TCLP development program. The TCLP was developed based on data from 11 wastes and 95 target compounds which leached from these wastes (Ref. 6 and 7). The amount of work involved here is substantial. EPA is aware, however, of one waste type, specifically wastes of moderate to high alkalinity, that was not adequately represented by the 11 wastes, and has included provisions in the TCLP to insure that the potential environmental damage that may be caused by such a waste was not underestimated. (These changes are detailed further in this section).

Additional testing aimed at evaluating the need to modify the TCLP extraction fluid to alter its solubilizing potential is not believed to be necessary. In addition to the work described in section VIII (D), the Agency had earlier conducted two studies that evaluated the effect that changes in extraction fluid composition would have on solubilization of organics (Ref. 19 and 24). These studies examined the effect of adding acetic acid, carbohydrates, protein, tannic acid, citrate, thiosulfate, and a surfactant to the leaching medium. Both studies showed little change in toxicant solubility and extraction efficiency with the addition of these various solubilizing agents. This agrees well with the work done to develop the TCLP (Ref. 6 and 7), which also showed that leaching seems to be unaffected by minor changes to primarily aqueous extraction media. Thus, EPA believes that further testing is unlikely to result in a significant change in extraction fluid composition.

d. Mismanagement scenario. RCRA requires EPA to identify those wastes which pose a potential hazard to human health or the environment *if mismanaged.* In determining what form of mismanagement to model in developing the TCLP, the Agency considered several alternatives. These included segregated management, co-disposal with municipal refuse, co-disposal with industrial waste in a Subtitle D landfill, and co-disposal with industrial waste in a Subtitle C landfill which suffers some form of containment system failure.

For wastes which are not defined as hazardous (e.g., do not exhibit the proposed toxicity characteristic), the Agency has concluded that disposal in a Subtitle C (hazardous waste) landfill is not a reasonable mismanagement option. In the absence of regulation, there is no reason to expect that waste would go to the more expensive Subtitle C facilities. The Agency believes that it is reasonable to base its regulations on adverse effects when in a non-Subtitle C environment.

For the three remaining options, segregated management, co-disposal with municipal refuse. and co-disposal with industrial refuse in a Subtitle D landfill, the Agency believes that, in general, each is a plausible mismanagement scenario. Industrial facilities dedicated to the management of only one waste, or the waste from only one generator, are likely to pose less of a hazard than would general sanitary or industrial landfills, since the design and operation problems are

simpler and the operator has much more information on the properties of the wastes before and while the facility is in operation. To insure that industrial wastes are adequately managed, EPA has proposed to employ the more protective sanitary landfill scenario.

The Agency believes that sanitary landfills may pose more of a potential hazard than industrial landfills. Many States have required some additional protection (*e.g.*, more stringent siting requirements) at industrial landfills. The Agency, however, solicits comments on the choice of the sanitary landfill scenario, and specifically requests any evidence that another disposal scenario may represent the worst-case plausible mismanagement.

The scenario selected for the TCLP, as well as for the current EP, was co-disposal with municipal waste in a sanitary landfill. EPA selected this co-disposal scenario since Subtitle D sanitary landfills have traditionally accepted non-hazardous industrial wastes. A recent survey conducted for the Office of Solid Waste (Ref. 14) concluded that ". . . in general, Subtitle D landfills accept industrial wastes but not organic solvents or liquids." Wastes do have the potential to be subject to more aggressive conditions that might be better modeled through the use of strong inorganic acids, alkalies, or solvents.

The survey noted above, however, found that Subtitle D facilities generally take only small amounts of organic solvent wastes (*i.e.*, <1 to 2 percent of the total waste accepted). In addition, EPA will consider listing specific wastes as hazardous, when their normal management or their potential for mismanagement suggests more aggressive conditions. The Agency solicits comments on the fate of industrial wastes, the 5% industrial waste, 95% municipal waste assumption used in developing the leaching procedure, and the level of solvents which can be found at Subtitle D landfills.

The Agency recognizes that not all industrial waste, or even wastes from all industries, go to Subtitle D sanitary landfills. The Agency believes, however, that this scenario is a reasonable worst-case and that *some* industrial wastes go to such facilities. In addition, it could be a serious administrative problem to define hazardous waste characteristics based on waste-specific or industry-specific disposal scenarios (including different leaching media) for the many different wastes generated. Even if different toxicity characteristics could be created, difficult enforcement issues would result. For example, if the Agency discovered an uncontrolled waste situation (e.g., waste disposed in an open pit) it might be difficult to determine what characteristic test should apply to the waste because there may be very little available information about how the waste was generated. Moreover, even where some information existed about the source of the waste, the Agency believes that the existence of varied toxicity tests would encourage disputes about which test should apply to a particular waste.

It is therefore reasonable to use a Subtitle D sanitary landfill as a general model of how industrial wastes might be disposed. The Agency, however, solicits comments on whether this scenario is appropriate for all wastes. Commenters identifying a different scenario for particular wastes should explain why the Subtitle D sanitary landfill model is inappropriate and what disposal scenario would be appropriate for those wastes, including a discussion of what leaching medium is suggested by that scenario. In response to this information, the Agency may develop special management standards for a class or classes of wastes.

As an additional matter, the Agency believes that the predicted degree of contaminant concentration in leachate could reasonably occur in the course of other types of land based waste management (e.g., surface impoundments). The TCLP, as well as the EP, basically involve mixing the waste with an aqueous leaching media, and seeing if certain contaminants can migrate from the waste to a significant degree. If such mobility is demonstrated, EPA believes that the waste in question poses a potential hazard to ground water, and that proper management controls need to be instituted to preclude unacceptable contamination of ground water. This applies to the leaching of both organics and inorganics.

First, as discussed previously, minor changes to primarily aqueous media do not generally affect the leaching of organic compounds. For inorganics, the acidity afforded by the TCLP leaching fluid accounts for the possibility that wastes could be subjected to mild acidic conditions occurring in other types of land disposal environments.

Wastes do have the potential to be subjected to more aggressive conditions that might be better modeled through the use of strong inorganic acids, alkalies, or solvents. The survey referred to earlier (Ref. 14) found that Subtitle D facilities generally take only small amounts of organic solvent wastes (e.g., ≤1 to 2 percent of the total waste accepted). In addition, EPA will consider listing specific wastes as hazardous, when their normal management or their potential for mismanagement dictates more aggressive conditions.

e. Treatment of highly alkaline wastes. As mentioned previously, highly alkaline wastes were not adequately represented by the 11 wastes used in the TCLP development program. EPA is concerned that the potential hazard posed by these wastes may be underestimated by the acetate buffer system initially chosen for the TCLP (See section VIII(D)). Specifically, EPA believes that an increase in the leaching of inorganic and some organic species may be observed as the alkalinity of wastes becomes exhausted due to continuous contact with an acidic leaching medium. Note that this can occur well after the 20 to 1 liquid to solid ratio selected for the EP and TCLP. Data from the TCLP development program (on a moderately alkaline waste), and from subsequent studies on wastes of moderate to high alkalinity (Ref. 8), demonstrated that the leaching rate of heavy metals was relatively constant, and in some cases increased slightly, over liquid to solid ratios as high as 30 to 1. Constituents from non-alkaline wastes generally experience a decrease in leaching rate during this time period (Ref. 6 and 7). The TCLP acetate buffer leaching fluid may therefore not adequately account for the leaching of heavy metals from wastes of moderate to high alkalinity.

To address this problem, EPA determined that an increase in the acidity of the leaching medium for the alkaline wastes would adequately account for the increased leaching of these species that could eventually occur in landfills. To define this second leaching fluid, the basis behind the EP's maximum amount of acetic acid (i.e., 2 milliequivalents of acid per gram of waste) was used in defining a second leaching fluid to be used when evaluating highly alkaline wastes. Data gathered at EPA's Boone County Field Site over a period of 7 years indicated that the leachate generated by decomposing municipal waste contains approximately 0.14 equivalents of acidity per kilogram of dry refuse. Applying this data to the hypothetical co-disposal environment, EPA concluded that 1 gram of industrial waste could potentially be acted upon by 2 milliequivalents of acid. For a hundred gram sample (the EP's minimum sample size), this translated to a total of 200 milliequivalents of acid (Ref. 26). The acetate buffer system originally chosen for the TCLP supplies only 70

milliequivalents of acid for a hundred gram sample.

As indicated above, steady or increased leaching of inorganic species was demonstrated to occur up to and after the 20 to 1 liquid to solid ratio (Ref. 8). While this data demonstrates that the 70 milliequivalent acetate buffer system is not aggressive enough for most of the inorganic species investigated, it supports the use of a 200 milliequivalent acetic acid solution for only some of the inorganic species. The Agency is, however, proposing use of the 200 milliequivalent acetic acid solution for alkaline wastes to be protective of human health and the environment when such leaching does occur. The Agency believes this action is justified given the conservative nature of the Hazardous and Solid Waste Amendments of 1984. In addition, as indicated in the report on Phase I of the TCLP development effort (Ref. 6), municipal waste leachates, both those generated in lysimeters and real leachates, have been observed in other studies to contain higher concentrations of carboxylic acids (measured as total organic carbon, of which approximately 70 percent is made up of carboxylic acids (Ref. 6)), than those measured in the municipal waste leachate used in the TCLP development program.

Hence, EPA is proposing a two leaching fluid system for the TCLP. As explained above, the Agency has chosen to base the strength of the alkaline waste leaching medium on the basis behind the EP's limit on the amount of acetic acid used. This will involve a 2 milliequivalent of acid per gram of waste leaching fluid for wastes of moderate to high alkalinity and a 0.7 milliequivalent per gram of waste leaching fluid for other wastes. A simple test of waste alkalinity is proposed as a means of determining the appropriate leaching fluid. For highly alkaline wastes (i.e., alkalinity $>$ 0.7 milliequivalents/gm), the more acidic leaching fluid would be used. Note that EPA is not proposing this dual leaching fluid system for the evaluation of volatile compounds, since these compounds are expected to be unaffected by slight changes in acidity. More detail is provided in Section VIII (D) and in the background document supporting the TCLP (Ref. 33).

f. Use of a pre-screen test. One concern that was raised with the TCLP was that the protocol for dealing with volatile compounds is likely to be considerably more expensive than the protocol for the non-volatiles. Similarly, since this proposal involves additional analytes, the analytical costs associated with the TCLP protocol will also increase over that of the EP. For these reasons, EPA is proposing to establish a pre-screen test for the TCLP protocol. This pre-screen consists of a total analysis of the waste itself (using SW-846 methods, Ref. 27)), to determine if the waste contains sufficient amounts of specific compounds for the regulatory level to be exceeded, assuming that all the compound leaches from the waste. If based on such an analysis one can be certain that the regulatory level cannot be exceeded, then the TCLP does not have to be performed.

This pre-screen is being offered as a cost saving alternative, and is not mandatory. It will be especially useful to those generators who wish to demonstrate that their waste does not contain sufficient amounts of certain compounds, and therefore, that further analysis would be unnecessary. Perhaps a prime example of this is wastes resulting from a combustion process, like ashes from incineration. Since these wastes would likely be devoid of volatile components running the TCLP for volatiles would be unnecessary.

2. Technical Issues

a. Use of extraction devices. The EP protocol contains a descriptive definition of what was considered to be acceptable agitation. Two types of extraction equipment are described which EPA has determined meet this definition. One is a stirrer type extractor which uses small fan-like blades to mix the extraction fluid with the waste. The other type involves rotary action in which closed bottles containing the waste/extraction fluid mixture are tumbled in an end over end fashion (Ref. 27). This lack of specificity in agitation conditions is a major source of variability.

Today's proposal eliminates this source of variability by specifying a single means of agitation (i.e., rotary tumbler), and a fixed agitation rate (30$\pm$2 rpm). The rotary of tumbler type of extractor was selected for several reasons. It is widely recognized as a reproducible means of contacting the liquid and solid, and has been standardized by ASTM in their draft method D3987 (Ref. 1). Also, a factor in this determination was that the Agency's Science Advisory Board (SAB), in reviewing the TCLP development program, recommended that EPA develop one device and one set of operating conditions (Ref. 29). Although EPA recognized that this would require laboratories to purchase additional equipment, EPA has opted to propose the use of rotary agitation only.

Another related issue deals with the extractor vessel. As discussed in section VIII (D), EPA has developed a zero-headspace extraction vessel (ZHE) for use when extracting wastes with volatile organic compounds. This device can accommodate liquid/solid separation within the device, and obviates the need for an outside pressure filtration apparatus. One issue associated with use of this device is that, due to its 500 ml internal capacity, it can only accommodate a maximum sample size of 25 grams for a 100 percent solids sample. (A device of the normal 2 liter capacity was impractical due to its large size and weight.) For a waste of less than 100 percent solids, the maximum sample size the device can accommodate is tied to the percent solids of the waste. The device can only accommodate the minimal 100 gram sample size for wastes that are 25 percent solids or less.

Another problem associated with the extractor is that while EPA is proposing to require the zero-headspace extractor when dealing with volatiles, EPA is requiring use of regular extraction bottles when dealing with metals and other non-volatile components. Regular extraction bottles are much less expensive and easier to use than the zero-headspace vessel. The problem is that while EPA originally intended the zero-headspace extractor to be allowed to be used for metals and non-volatiles as well, certain features of the device, and other constraints, have led EPA to allow its use only when dealing with volatiles.

The problem touches upon the SAB's concern that, in the interest of precision, one device and one set of operating conditions should be specified (See section VIII(D)). There are actually two factors here which differ between regular extraction bottles and the zero-headspace vessel which could affect precision. The first is that since regular extraction bottles will provide for at least some headspace, agitation is likely to be slightly greater than with the zero-headspace vessel.

The second factor is that the two devices involve different types of liquid/solid separation techniques. Whereas the ZHE requires piston-applied pressure, use of bottles involves conventional air pressure filtration. These two means of applying pressure to accomplish liquid/solid separation are capable of producing different results for some waste types.

b. Particle size reduction. The EP protocol requires particle size reduction in those cases where the waste cannot pass through a 9.5 mm sieve, or has a

surface area of less than 3.1 cm^2/gm. The TCLP continues with this requirement. One difference, however, deals with particle size reduction for monolithic type wastes. The EP allows the alternative of using the Structural Integrity Procedure (SIP), which amounts to pounding the monolithic waste with hammer-like blows and then conducting the extraction on the resulting sample, whether in one piece or in many pieces. The proposed TCLP does not allow use of the SIP (i.e., requires particle size reduction) for several reasons. The first reason again has to do with precision and the Science Advisory Board's comment to limit the new procedure to one device and set of operating conditions. Secondly, the Agency believes that given the uncertainties concerning the long term environmental stability of solidified wastes, an environmentally conservative approach is warranted. The SIP was originally developed as a means of assessing the degree to which a cementitious process stabilized a waste to the extent that the waste would remain as a monolithic block even after disposal. Such stabilization processes decrease leaching potential through reduction of surface area, and thus the area of potential leachate contact. Many processes also provide for chemical stabilization by binding heavy metals in insoluble hydroxide and other complexes.

The Agency believes that physical stabilization alone is not enough to insure that components do not leach in significant quantities from wastes. There are two types of actions which may act to reduce the physical integrity of stabilized wastes. First, the action of heavy landfill equipment, which the SIP is designed to simulate, will act to reduce the monolithic blocks into smaller pieces. Secondly, and more important, is the effect of natural weathering forces, such as wet/dry and freeze/thaw cycles (Ref. 10). The SIP does not account for such weathering. The Agency is currently investigating the effects of natural weathering on monolithic wastes, and may propose the use of additional predictive methodology at some later date. In the interim, by not allowing use of the SIP, the Agency insures that generators do not rely on physical stabilization alone.

An unrelated issue regarding particle size reduction also involves the treatment of volatile compounds. While EPA is attempting to prevent loss of volatiles (through introduction of the ZHE), if a waste containing volatiles requires particle size reduction, it is likely that some portion of these volatiles will be lost before the waste is introduced into the ZHE.

Herein lies a problem that may require a trade-off. Is it more important to reduce particle size or to prevent the loss of volatiles? EPA believes that particle size reduction is more important and has addressed this problem in the draft TCLP protocol by specifying that, where possible, particle size reduction be conducted to the extent possible on the sample as it is being taken.

The protocol does recognize, however, that there will be situations where volatile containing samples requiring particle size reduction cannot be reduced under these conditions. In this case, the protocol specifies that the sample should first be refrigerated to reduce the vapor pressure of the volatiles, and then that the particle size should be reduced with minimal exposure to the atmosphere to, at least, minimize the loss of volatiles. Another alternative is to require extractions under both conditions. Comments and alternative suggestions regarding this issue are solicited.

c. Quality assurance requirements. The quality assurance requirements of the EP are relatively straightforward. They require a minimum of one blanket per sample batch, and the method of standard addition (MSA) to be run for all samples. The Agency has received comments that requiring MSA for all extractions, which is very expensive, is unnecessary for all situations. This issue is particularly significant in determining the quality assurance requirements for the TCLP, given the increased number of analytes. In addition, the EP protocol is felt to need clarification and expansion in addressing other aspects of quality assurance, such as sample holding times.

The reader is referred to section 9 of the draft TCLP protocol, which appears as Appendix II to Part 261 in the regulation section of this proposed rule for review of the quality assurance requirements. One change that deserves mention here is in the requirement for the method of standard addition (MSA). Recognizing that MSA is expensive and not always necessary, EPA is proposing to require MSA only under certain conditions (See Proposed Appendix II to Part 261). This change recognizes that MSA is necessary only when the measured concentration of a constituent is close enough to the threshold, that matrix interferences could yield a wrong decision regarding the determination of hazard, or when there is evidence that severe matrix interference may be present.

IV. Other Aspects of Proposal

A. Testing Frequency and Recordkeeping

Under the framework being proposed today, the determination of whether a waste is a hazardous waste depends on whether the concentrations of constituents in the TCLP extract exceed the applicable regulatory levels. Since this determination is critical, EPA is evaluating whether to require periodic waste testing.

EPA has identified three general approaches to testing requirements, which are discussed in detail below. First, EPA could require generators to evaluate their wastes as to whether they exceed applicable regulatory levels, but not specifically require testing to make this determination. This approach is consistent with the current application of the RCRA hazardous waste characteristics. Second, EPA could require testing of wastes at a frequency specified by regulation. Third, EPA could require the generator to test, documenting the determination of the appropriate testing frequency based on guidance provided by the Agency.

As indicated above, existing regulations (40 CFR 262.11) require generators of solid wastes to determine whether their waste is hazardous. If the solid waste is not specifically excluded from regulation, and it is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, then the generator must determine whether the waste is hazardous by any of the hazardous waste characteristics included in Subpart C of 40 CFR Part 261. This determination may be made by either testing the waste or by the application of knowledge of the waste in light of the materials or the processes used in its generation. Under 40 CFR 262.40, generators are required to keep records on how the hazard determination was made. Thus, although generators are held responsible for determining whether their wastes are hazardous, they are not specifically required to perform testing.

Although this approach would place the least burden on the regulated community, EPA is concerned that this approach may not promote voluntary compliance and that it could hamper Agency enforcement efforts against those members of the regulated community that do not comply voluntarily with the regulations.

Another possible approach is to require periodic testing, specifying in the regulations both the method and the frequency of testing. Thus, testing might be required on a semiannual, or annual

basis. This approach would make enforcement of the regulations easier and would likely induce a higher level of voluntary compliance since the regulations would be highly specific regarding what constitutes an acceptable testing program and what actions and inactions would constitute violations.

There are, however, several problems with such an approach. First, there are problems inherent in specifying an appropriate testing frequency. Based on data from the Office of Solid Waste's Industry Studies Program and data from the Office of Water's Effluent Guidelines Program, it is clear that many waste streams are extremely variable in concentrations of chemical constituents from one plant to another, even when the same general process is employed. Variability exists not only from one generator to another, but also spatially and temporarily within a single plant or process. This variability can be caused by plant start-ups and shut-downs, changes in raw materials, changes in product specifications, seasonal changes, or meteorological events. While these factors tend to indicate the desirability of requiring testing at frequent specified intervals, the process-specific nature of this variability (among others) makes it difficult to identify a generically appropriate testing interval. For example, an appropriate frequency for a continuous process might be too infrequent for a batch process.

The third possible approach is to require generators to perform testing on their wastes, but not to specify a testing frequency in the regulations. Rather, generators would be required to determine an appropriate testing frequency based on guidance developed by the Agency and to document, in their records, this frequency determination. The advantage of this approach is that process-specific factors could be taken into account in determining the appropriate testing interval. Thus, although there would be some additional burden on generators to determine, based on the guidance, the appropriate frequency for testing tailored to specific factors relating to his process, there would be less of a chance of requiring unnecessarily frequent testing. This approach does, however, present greater enforcement difficulties than does the approach of specifying generic periodic testing intervals.

Even if testing is specifically required, a problem still remains as to how to assure that the waste sample subjected to testing is representative of both the batch and the process from which they are derived. This problem arises not only in the context of the Toxicity Characteristic program, but also in connection with other waste sampling requirements. EPA is currently developing a guidance manual on representative sampling that will address these concerns and anticipates publishing that guidance in late 1986.

EPA is proposing to retain the requirement that generators evaluate their wastes as to whether they exceed applicable regulatory thresholds, but not specifically to require periodic testing. EPA is, however, requesting comments on the approaches discussed above, as well as other possible alternatives to these approaches.

B. Relationship To Multiple EP and Oily Waste EP

As a result of its waste listing program, EPA has listed a number of wastes as being hazardous on the basis that these wastes typically or frequently contain hazardous constituents at significant levels, or that they typically or frequently exhibit one or more of the characteristics of hazardous wastes. In recognition, however, that individual wastes may not actually be hazardous, due perhaps to a different process or the use of different raw materials, EPA has established a "delisting program," where generators could demonstrate to EPA that the particular waste in question does not constitute a hazardous waste. Although no waste to date has been listed because it exhibits the EPTC, the delisting program has been applying the EP protocol to this determination for the metal contaminants (with the application of a more conservative dilution/attenuation factor).

Given that the delisting process involves a more waste specific approach, a number of situations have arisen which have led EPA to modify the EP to address specific situations. The use of multiple extractions with simulated acid rain have been used to predict any long-term effects acid rain might have on stabilized wastes (the Multiple Extraction Procedure or MEP), and the Oily Waste EP (OWEP) has been used to predict the leaching of metals from wastes which contain significant amounts of oily materials. The OWEP was adopted because of the Agency's concern that the oil present in the wastes may (1) degrade, thus permitting the metals to be leached from the residue, or (2) migrate itself, and transport metals present in the organic phase to the ground water.

The Agency has a number of studies underway to better define the situations when such modifications are required. Pending completion of such studies the Agency will continue to employ the MEP and OWEP only in the listing and delisting programs where situation specific decisions can be made.

C. Analytical Methods

The analytical methods proposed to be used for TCLP extracts are shown in section VIII(C) (See Table C–2), and also appear in the regulation section of this proposal as required methods. These are SW–846 methods (Ref. 27).

Analyzing the TCLP extract for phenolic compounds and phenoxy acid herbicides poses a potential analytical problem. The leaching fluid used in the new leaching procedure is 0.1 M with respect to acetate. Due to potential interference from the acetate ion, the routinely used analytical methods used for these compounds (i.e., GC/MS–SW–846 method 8270) may not be sufficient. EPA is presently investigating these methods to ascertain whether they are sufficient, or, whether it may be necessary to modify these methods. One modification being investigated is whether it may be possible to remove the acetate ion from the extract before determination of the phenolics and herbicides.

EPA is also investigating the use of high pressure liquid chromatography (HPLC) using electrochemical and fluorescence detection. HPLC with fluorescence detection was used in developing the improved leaching procedure, and has been shown to produce acceptable results (Ref. 6 and 7). A GC/MS method would be preferable since use of the HPLC method could add significantly to analytical costs. Should the presence of the acetate ion present substantial problems to GC/MS, it is likely that HPLC may be specified.

These methods are currently being evaluated. The Agency solicits comments and data on these or other methods which may be appropriate. On completion of these studies and evaluation of data received, a method for the phenolics will be selected and proposed for use with TCLP extracts prior to promulgation of this rule.

D. Notification Requirements

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous waste to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA

identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

V. Relationship to Other Regulatory Authorities

As has been pointed out previously, the Toxicity Characteristic threshold setting approach is modeled along the same lines as that used in the January 14, 1986 proposed standards for implementing the Land Disposal Restrictions regulations (51 FR 1603). However, since the Toxicity Characteristic proposes to use a Subtitle D disposal model, a slightly broader confidence interval for the Monte Carlo simulation, and an order of magnitude higher risk level for the carcinogens, the regulatory thresholds may be different than those proposed for banning wastes from land disposal.

The reason for the different thresholds in the Toxicity Characteristic relates to the nature of characteristics and the relationship between characteristics and listings, as discussed previously in this preamble. Characteristics are designed to be self implementing hazardous waste definitions in which waste and management specific factors are not considered. For that reason, characteristics are established at levels at which the Agency has a very high level of certainty that a waste which exhibits these properties, needs to be managed in a controlled manner (i.e., is a hazardous waste). The Agency realizes that not all waste which exhibit properties at levels below the characteristic are safe for disposal as nonhazardous waste. Rather, for those wastes having properties lower than the characteristic levels, and which are demonstrated to pose a hazard to human health or the environment, the Agency undertakes waste specific evaluations under the auspices of its listing program. Wastes which are determined to require controlled management after consideration of the factors identified in 40 CFR 261.11(a)(3), (e.g., the nature of the toxic constituents, toxicant mobility under various environmental management scenarios, volume of waste generated, potential methods of management), are then specifically listed as hazardous wastes and subjected to the appropriate RCRA management controls.

For the land disposal restrictions program, the screening levels identified through the equation are levels which EPA is very certain are protective at Subtitle C land disposal facilities. Wastes not meeting the screening levels are not banned outright from land disposal, but rather subject to case-by-case evaluations taking into account the specific characteristics of individual facilities. This case-by-case determination is initiated by petitions for exmption from the land disposal restrictions. The evlauation of these petitions will be based on results of modeling similar to that used to set screening levels, but with site-specific rather than conservative generic factors included.

In addiiton, the HSWA requires a very high standard of proof for a showing that a hazardous waste is suitable for land disposal. For this reason, the Agency believes it is appropriate to use a higher level of confidence and a lower cancer risk level in the modeling for the land disposal restrictions decisions, than is used for the Toxicity Characteristic. However, the Agency requests comment on whether the risk level and confidence level used in the Toxicity Characteristic should be the same as for the screening levels used in the proposed land disposal restrictions rule.

Whenever a waste or waste stream is determined to be hazardous under section 3001 of RCRA, it automatically becomes a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA section 103 requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs), immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release. (See 50 FR 13456, April 4, 1985).

The term "hazardous substance" includes all substances designated in § 302.4(a) of the April 4, 1985 final rule (50 FR 13474), as well as unlisted hazardous wastes exhibiting the characteristics of Ignitability, Corrosivity, Reactivity, and Extraction Procedure Toxicity (ICRE). (See § 302.4(b) of the April 4, 1985 final rule).

There are currently only 14 substances listed under CERCLA as ICRE wastes on the basis of the EP Toxicity Characteristic, most of which are also specifically designated as hazardous substances under 40 CFR 302.4(a). Under today's proposed rule, an additional 38 compounds, which are also specifically designated as hazardous substances under 40 CFR 302.4(a), would be incorporated under the newly defined Toxicity Characteristic. Accordingly, EPA proposes in this rulemaking to amend Table 302.4 of 40 CFR 302.4, to remove "Characteristic of EP Toxicity" and replace it with "Toxicity Characteristic," and to list the additional Toxicity Characteristic contaminants along with their final RQs from Table 302.4.

The CERCLA program will also use the TCLP procedure to help determine when waste taken off-site must be managed as a hazardous waste. To the extent that the TCLP is applicable or relevant and appropriate, the CERCLA program will apply the TCLP in a manner that is consistent with the National Contingency Plan (NCP) (50 FR 47912, November 20, 1985) and policy on CERCLA compliance (50 FR 47946, November 20, 1985) with other environmental statutes.

As indicated earlier in this preamble, under section 405 of the Clean Water Act (CWA), EPA establishes guidelines for the disposal and use of sewage sludge. The regulation of sewage sludge is necessarily a complex matter because these sludges fall within the jurisdiction of several Federal environmental programs. Under section 1004(27) of RCRA, the definition of "solid waste" specifically includes "sludge from a waste treatment plant." In defining "sludge," section 1004(26A) includes wastes from a "municipal wastewater treatment plant." Under section 102 of the Marine Protection, Research and Sanctuaries Act, EPA regulates the ocean dumping of sludge, including sewage sludge.

Where such overlapping jurisdiction exists, EPA seeks to integrate and coordinate its regulatory actions to the extent feasible. Thus, consistent with section 1006 of RCRA, the Agency's strategy for the development of a comprehensive sewage sludge management regulation will result in the establishment of a separate regulation. Once this regulation is in place, all sewage sludge use and disposal practices will be covered under appropriate provisions of section 405 of the CWA. If appropriate, sewage sludge that would be defined as a hazardous waste will be exempted from coverage under provisions of Subtitle C of RCRA, once this separate sewage, sludge regulation, which will provide an equivalent level of protection, is issued.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule would be promulgated pursuant to sections 3001 (g) and (h) of RCRA, provisions added by HSWA. Thus, it would be added to Table 1 in section 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposed rule, when promulgated, in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Since the rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is approved. States with existing rules may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

VII. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

1. Executive Order 12291

Executive Order 12291 requires regulatory agencies to conduct a Regulatory Impact Analysis (RIA) for any major rule. A major rule is one likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

EPA conducted an RIA to compare several regulatory alternatives, as explained in the following sections. The RIA provides an analysis based on the guidelines contained in the Office of Management and Budget's "Interim Regulatory Impact Analysis Guidance" (Ref. 21) and EPA's "Guidelines for Performing Regulatory Impact Analyses" (Ref. 28).

Based on the results of this analysis the Agency has concluded that this proposed regulation is a major rule with an annual cost to the economy of $151 million and an annual benefit of $1,625 million. The benefits, however, may be an overestimate since it is assumed that all contaminated aquifers would be cleaned up. Thus, the savings attributed to not having to clean up those aquifers would not accrue with a resultant decrease in benefits. Due to the case-by-case nature of these cleanup decisions, it was not possible to quantify this overestimation.

The purpose of section VII(A1) is to summarize the methodologies and findings of the RIA. Section VII(A)(2) discusses the basic approach taken in the RIA, and provides the regulatory alternatives examined. Section VII(A)(3) lists the industries projected to be affected by the proposed actions, and section VII(A)(4) discusses the methodologies employed in the economic impacts, benefit, and cost analyses. Finally, section VII(A)(5) reviews and compares the results of the benefit and cost estimations. The full draft RIA is available as part of one of the background documents supporting this proposed regulation (Ref. 22).

This proposed rule was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

2. Basic Approach/Regulatory Alternatives

EPA is proposing to expand its list of contaminants under the EP Toxicity Characteristic to include a total of 52 contaminants. As explained earlier, and in sections VIII (A), (B) and (C), regulatory levels for these contaminants have been established by multiplying the chronic toxicity reference level for the contaminant, by its compound specific dilution/attenuation factor. Since EPA was in the process of refining both its chronic toxicity reference levels for some of the compounds, and its ground water transport model, many of the actual levels proposed today could not be used in estimating regulatory impact. Since the ground water transport model was in the process of being refined, straight dilution/

attenuation factors of 10, 100, and 1,000 were applied to estimated chronic toxicity reference levels, to arrive at three levels of regulation. Thus, including the status quo (i.e., no regulation), a total of four regulatory alternatives were examined.

This approach was taken as it would provide minimum and maximum estimates of regulatory impact, and also because it provided EPA with comparative cost and benefits estimates for three levels of regulation. Since the regulatory levels for the elemental drinking water standards are being retained, and since the TCLP is expected to be roughly equivalent to the EP, this RIA also assumes that the universe of waste regulated as a result of the elemental drinking water standards is unchanged. Benefits and costs were determined, then, for the following regulatory alternatives:

Alternative 1. Includes all currently unregulated wastes which would produce a TCLP extract containing any of the contaminants at a level greater than or equal to 100 times the chronic toxicity reference level.

Alternative 2. Same as above except this alternative evaluates a level greater than or equal to 10 times the chronic toxicity reference level.

Alternative 3. Same as above except this alternative evaluates a level greater than or equal to 1,000 times the chronic toxicity reference level.

Alternative 4. Status quo (i.e., no regulation).

The proposed regulation, since it employs compound specific attenuation factors, does not exactly mirror any of the alternatives studied. Rather, it falls between alternatives 2 and 3, with 40 compounds having a dilution/attenuation factor of 14.4, and 12 compounds with factors ranging from 18 to 150 (See section VIII(C). As will be seen from the discussion which follows, alternatives 1 and 2 both yield almost identical results for both costs and benefits. Thus, basing the conclusions on the results of alternatives 1 or 2 are not expected to result in any significant difference.

Benefits and costs for each regulatory alternative are compared to those of the baseline status quo. The status quo is assumed not to require industry to incur additional waste management costs. However, this RIA assumes that society will incur the costs of not regulating these wastes. The "social" costs of the status quo are assumed to be the benefits that would occur if the wastes were regulated. They vary with the projected number of affected facilities.

Note that no original research, sampling, or analyses were conducted as part of this RIA. In addition, as in all RIAs, a number of assumptions were made in order to predict impact. Assumptions about potentially affected wastes were based primarily on technical judgment, review of available literature and data, and EPA guidance. The determination of whether wastes would be hazardous under this proposed rule was based primarily on the solubility of individual contaminants rather than actual testing or data. Consequently, EPA believes that the estimates of projected impact indicated in the following paragraphs, are conservative (i.e., overstated) and should be viewed in a relative sense. In addition, although EPA expects to have better impact estimates (and some additional actual data) when this proposed regulation is promulgated, the very nature of predicting impact based on assumptions and technical judgment dictates that impact estimates still be viewed in a relative sense.

3. Affected Industries

Since the proposed action is chemical specific rather than industry-specific, it affects a wide range of industries. The following table (Table 2) shows the affected industries by Standard Industrial Classification (SIC) code, and gives the number of potentially affected facilities:

TABLE 2.—DIRECTLY AFFECTED INDUSTRIES

Industry	SIC code No.	Description	Affected facilities [1]
Plastics materials and resins.	2821	Manufacturing of synthetic resins, plastics materials and nonvulcanizable elastomers.	823
Synthetic rubber.	2822	Manufacturing synthetic rubber by polymerization or copolymerization.	2
Medicinals and botanicals.	2833	Manufacturing bulk organic and inorganic medicinal chemicals and botanical drugs.	1
Soap and other detergents.	2841	Manufacturing soap and synthetic organic detergents, inorganic alkaline detergents, and crude and refined glycerin.	2
Surface active agents.	2843	Producing surface active preparations as wetting agents, emulsifiers, and penetrants.	22
Paints and allied products.	2851	Manufacturing paints, varnishes, and allied paint products.	2
Cyclic crudes and intermediates.	2865	Manufacturing coal tar crudes and cyclic organic intermediates, dyes, color lakes, and toners.	185
Industrial organic chemicals.	2869	Manufacturing industrial organic chemicals not elsewhere classified.	214
Agricultural chemicals.	2879	Formulation and preparation of pest control chemicals, including insecticides, fungicides, and herbicides.	7
Petroleum refining.	2911	Producing gasoline, kerosene, fuel oils, lubricants, and other petroleum derived products.	2
Nonferrous wire drawing and insulating.	3357	Drawing, drawing and insulating, and insulating wire and cable of nonferrous metals.	5
Total			1,265

[1] Based on Alternative 2 (10×dilution/attenuation factor).

Most of the plants that produce and use the proposed chemicals appear in the organic chemical industries. Any facility that is projected to generate a waste which could produce a TCLP extract containing any contaminant at concentrations greater than the regulatory level (i.e., the solubility of the contaminant exceeds the level), is assumed to be a hazardous waste. (Those wastes currently regulated by RCRA are not included in the analysis.) The number of affected facilities may include plants that produce or use more than one of the chemicals. The actual number of plants affected may therefore be less than the total shown.

The RIA addresses primarily the impact of the expansion of the Toxicity Characteristic on the industrial sector. It is apparent, however, that since sewage sludges are defined as solid wastes under RCRA, today's proposal will also have an impact on the municipal sector. Given that there are some 15,000 municipal generators of sewage sludge across the United States, the impact could be significant. While less than 10 percent of these facilities accept sufficient industrial waste to cause any concern, these facilities generate most of the sewage sludge across the United States.

The existing and proposed regulations do not differ in their treatment of metals. Thus, any impact of the proposed regulation on the municipal sector would be due solely to the additional organic compounds. Due to this concern, EPA has begun a testing program to evaluate these sludges. To date, eight sewage sludges from facilities receiving significant industrial input have been tested with the TCLP, and all were found not to exceed any of the Toxicity Characteristic levels (organics or inorganics). Although more sewage

sludge is being tested, EPA expects that only sludge containing very high levels of the organic toxicants proposed for addition (which would most likely be introduced through industrial input), would be defined as hazardous. Very few sewage sludges are expected to be hazardous wastes.

Hence, most of the impact of the proposed rule on the municipal sector will be the requirement to evaluate sludges against the Toxicity Characteristic levels. This, as explained earlier in the preamble, does not necessarily mean that all sewage sludges will be tested using the TCLP. Rather, as with the current EPTC, the vast majority of sewage sludge generators will perform that hazard determination using their knowledge of the sludge they generate. EPA believes that most of the municipal facilities receive such small amounts of industrial input, that they will be able to support a determination of non-hazardousness without having to test sludges using the TCLP.

To assess more fully the regulation's impact on the municipal sector, the Agency will be collecting additional data during the period between proposal and promulgation. To help the Agency in its impact estimates, EPA is requesting that data on municipal sewage sludges generated with the EP, the TCLP, or total analyses be sent to the Agency. Although it is not necessary to indicate the source of the sewage sludge, EPA solicits information such as the extent of industrial input to the generating facility, the type of industry involved, the amount of sludge generated by the facility annually, the type and extent of sludge generation and treatment (e.g., primary, secondary, tertiary, filtration, etc.), and the disposal method used.

4. Methodology Employed

a. Economic impacts methodology. A Partial Equilibrium Multimarket (PEM) model was used to estimate economic impacts. The basis of this model is the partial equilibrium framework, in which only a manageable number of markets is modeled. Economic impacts, or equilibrium changes, in non-modeled markets are assumed to be insignificant.

Input, directly affected, and output markets ideally would be linked together by a vertical market structure. A majority of the expected market changes would be modeled by the structure in which markets are linked to each other through the purchase of inputs or the sale of outputs. As changes occur in one market, resource reallocations by buyers and sellers prompt changes in other markets. Limited data availability imposes constraints on such a modeling effort. Thus, the economic impacts model, used quantitatively, projects economic impacts only in the identifiable directly affected markets.

As described in the full RIA, directly affected markets have been identified at the four-digit SIC level. Since different products are included within a four-digit SIC code, products unaffected by the proposed regulation may unavoidably be included in this analysis.

The directly affected markets are linked together by means of the PEM model. Data requirements include an original equilibrium, supply functions, demand functions, and the initial impacts caused by the proposed regulatory alternatives. Several assumptions make this data collection effort more manageable. Within this economic impacts model, all supply functions are treated as being perfectly elastic. This assumption limits the interaction between directly affected markets. A demand shift in an output market does not change input price and does not change production costs of a directly affected product. What this simplification implies cannot be assessed because of limited data. In the long run, however, all supply functions tend to become more elastic (or flatten), making the importance of this assumption less significant.

Demand functions are assumed to incorporate changes in equilibrium. As defined by Just, Heath, and Schmitz (Ref. 15), these general equilibrium demand functions define the relationship between price and quantity, given all changes in output markets. For example, a price increase and quantity decrease in an output market ordinarily will shift demand for a directly affected product. With a general equilibrium demand function, a shift in demand function does not have to be defined.

Market changes caused by the proposed regulation are straightforward. Initial equilibrium changes occur as increased production costs and cause supply functions in the directly affected markets to shift up. Owing to the assumptions listed above, these new prices and quantities now represent a new equilibrium since input prices do not change and demand for directly affected products does not shift. Changes in the unmodeled input market are only changes in quantity traded. Changes in unmodeled output markets are an increase in price and a decrease in quantity traded.

The PEM model simplifies the analysis in several ways. Most importantly, it allows measurement of all social costs in the directly affected markets. Also, it allows the economic impacts to be solved in several steps rather than simultaneously. The projected economic impacts are then used to define benefits and costs.

b. Benefits estimation methodology. Regulation of wastes containing any one of the selected chemicals is anticipated to result in a reduced risk of contamination of ground water that serves as a supply of drinking water for many communities. If the contaminating chemical is a carcinogen, consumption of drinking water may result in an excess incidence of cancer cases in the population. Ingestion of noncarcinogenic chemicals in drinking water at a level above the RfD may be correlated with toxic, reproductive, or genetic effects, depending on the particular chemical. If people avoid drinking contaminated ground water, switching to an alternative water source imposes substantial costs on the affected communities. Often, if a chemical has been detected in the ground water, the contaminated aquifer is cleaned up (to the extent possible) and the landfill treated, which also results in additional costs to the community.

Estimates are made for each chemical of the health effects and switching and cleanup costs (corrective costs) attributable to the presence of that chemical in the ground water. Regulation of the waste is assumed to prevent these estimated health effects and corrective costs completely. The estimated benefits attributable to the regulation are the health effects and corrective costs avoided by its implementation.

Four steps are used to determine benefits: (1) Estimate quantity and concentration of chemical in landfill, (2) estimate concentration of chemical in leachate (i.e., TCLP extract), (3) estimate chemical concentration at drinking water well, and (4) estimate health effects and corrective costs attributable to that ground water contamination.

The unregulated wastes are assumed to be disposed in a landfill each year for 20 years (the average lifetime of a landfill). The amount of the chemical contaminant that leaches through the landfill, and the leaching duration, is determined using a leachate concentration model. From the bottom of the landfill, the contaminant is transported through the aquifer to the community well. The concentration of the contaminant at the well varies over time and is tracked over 100 years with a ground water transport model. The health and corrective costs attributable to the contaminated well are then estimated by a health and corrective costs model.

Two methods—the Base Case Method (Alternative 1) and an Alternate Method (use of a ground water transport model) were employed to estimate the concentration of the chemical in the leachate at the well. The estimated benefits presented in the next unit are calculated using the Base Case Method. This method assumes (1) that the landfill receives predominantly domestic refuse, with only 5 percent of the landfill holding industrial waste, (2) that the character of the leaching fluid to which wastes are exposed is primarily a function of the non-industrial material in the landfill, (3) that the landfill is located over an aquifer that is a source of drinking water, (4) that the soil below the landfill has limited attenuative capacity, (5) that the nearest drinking water wells are 150 meters (500 ft) downgradient from the landfill, and (6) that as constituents migrate from the landfill through the unsaturated and saturated zones to the source of drinking water, they are attenuated by a factor of 100.

c. Cost estimation methodology. The current disposal costs, or baseline, must be established if the increased disposal costs incurred by waste generators due to the proposed regulation are to be estimated. Current disposal costs are a function of the disposal alternatives in use. Where the waste is not a listed hazardous waste, current disposal practices are identified by examining the technical literature, by analogy to similar wastes for which disposal practice is known, or by assumption.

Some baseline disposal alternatives may understate the actual treatment and disposal applied to that waste, because no effort has been made to determine which wastes may be affected by State and local regulations that are more stringent than Federal regulations. This may also occur because firms voluntarily may be applying more thorough treatment and disposal than required by regulation. The result of this potential understatement of baseline treatment and disposal alternatives is that the estimated increase in disposal costs to comply with the characteristic approach will be greater than the actual increase.

For currently landfilled wastes not listed as hazardous but subject to the regulation, disposal practice after regulation will become more stringent and costs will increase. Disposal costs are assumed to remain the same for wastes currently incinerated or deepwell injected. Solvent wastes and a few other wastes are assumed to be incinerated.

Using model plant information, estimates of the incremental disposal and operating and maintenance costs associated with the implementation of the alternatives are projected. These estimated costs are then compared to the cost of contracting with commercial disposal services to estimate properly the minimum costs incurred by the affected facilities. These costs are annualized to reflect an accurate measure of the increased production costs associated with this proposal. Estimates of percentage cost change are generated for use in the product/consumption model. Under the assumption of full-cost pricing, these percentage estimates are determined by dividing the annualized incremental costs by the value of shipments in affected SIC industries.

The economic impacts model is used to derive all costs or welfare losses borne by consumers of directly affected products. Consumers suffer a welfare loss because they lose consumer surplus, or the value placed on consumption in excess of the amount required to purchase a product. Economic theory allows the estimation of total consumer costs through impacts in the directly affected markets. Thus, input and output market data are not required.

Consumer surplus losses represent the only recurrent or annual costs. Changes in waste disposal methods in response to a regulation are represented by an upward shift in the supply function. The higher production costs that result create a new equilibrium and a consumer surplus loss. The new equilibrium will have lower production at a higher cost than the initial equilibrium. A real resource cost is the value of the additional costs incurred to produce the new lower level of output. A dead-weight loss is the loss in surplus value consumers placed on those units that will no longer be produced.

Extension of the above analysis to a multimarket situation is straightforward. Since impacts in input and output markets need not be considered, total welfare costs are developed by assuming welfare costs in the directly affected markets.

Consumer surplus costs represent annual costs. Within this analysis all baseline data are presented for the year 1982. Consumer surplus losses will continue to be incurred, however, for an unknown number of years. To develop cost estimates for future years, costs are first estimated for 1982 and then assumed to be constant for all subsequent years. This simplifying assumption is necessary since time constraints preclude the projection of market trends.

Implementation costs, consisting of transaction costs and employment losses, represent losses in welfare that will be incurred only once. Transaction costs represent the value of resources that would be expended to determine if a waste stream is to be regulated. These costs are based on an estimated cost of sampling and analyzing each waste stream by affected facilities.

Employment losses occur since goods and services are forgone when individuals are employed. Losses are based on the projected change in production and employment-to-output ratios for each directly affected market. These losses are not valued in dollar terms because projecting the length of time for which an employee is unemployed is difficult. Similarly, the value to place on time, individual job skills, age, education, and personal dislike of being unemployed are not valued in dollar terms.

5. Results

a. Aggregate benefits. Continued use of current practices for managing wastes producing TCLP extracts containing the selected chemicals in excess to regulatory levels is expected to result in the deterioration of environmental quality. This deterioration may elevate risks to human health and reduce the quality of environmental resources, such as drinking water. The major route by which environmental quality is expected to be affected is through the leaching of contaminated wastes into ground water. Over 50 percent of the U.S. population uses ground water for drinking water. Further, contaminated ground water can enter surface water, reducing its quality. The capacity of both ground water and surface water to assimilate toxic chemicals is limited.

If people drink contaminated ground water, a wide range of health effects may occur, from simple gastrointestinal problems to cancer and birth defects. The focus is on the possible excess cancer cases if the selected chemicals are not regulated. It is assumed that contaminated water would continue to be used as a drinking water source until the concentration reached taste or odor thresholds of the average person. When that threshold is attained, it is assumed they would switch to alternative water sources.

When a landfill is recognized as a source of ground water contamination, it is also assumed that the municipality would take action to prevent further leaching of the chemicals. Estimates were developed for a representative community and aggregated to obtain national totals. This aggreation process

is not very precise, so the reader is cautioned to interpret the results presented carefully. The benefits and costs for each regulatory alternative are summarized in the following table (Table 3).

TABLE 3.—BENEFIT-COST ASSESSMENT

Benefits-Costs	Regulatory alternative		
	1	2	3
Monetized benefits:[a]			
Avoided cost of alternative water source:			
Present value ($10[6])[b]	3,218	3,317	3,174
Annualized ($10[6]/Yr)	378	390	373
Avoided cost of aquifer cleanup:			
Present value ($10[6])[b]	11,897	12,316	11,719
Annualized ($10[6]/Yr)	1,398	1,447	1,377
Monetized costs:			
Real resource cost:			
Present value ($10[6])[b]	1,285	1,287	1,186
Annualized ($10[6]/Yr)	151	151	139
Deadweight consumer surplus cost:			
Present value ($10[6])[b]	1.2	1.2	1.0
Annualized ($10[6]/Yr)	0.1	0.1	0.1
Transaction cost ($10[6])[c]	1.2	1.2	1.2
Net monetized benefits:[d]			
Present value ($10[6])[b]	13,830	14,345	13,706
Annualized ($10[6]/Yr)	1,625	1,685	1,610
Nonmonetized benefits:[a]			
Avoided cancer cases	54	54	53
Avoided person-years of exposure above the chronic threshould ($10[6])	4.8	4.8	0
Nonmonetized costs:			
Employee dislocations	407	407	372

[a] Benefits are based on Alternative 1.
[b] 20-Year cost discounted at 10 percent.
[c] One-time cost incurred first year.
[d] Monetized benefits minus monetized costs excluding transaction costs.

These estimates of the health effects and corrective costs attributable to a waste are developed for a typical community. The estimates of the aggregate benefits of the proposed regulation are obtained by assuming that health effects and corrective costs would be avoided by all the communities affected by the proposed regulation. Since the aggregation process used assumes that each waste affects a single typical community, it is somewhat arbitrary. Again, the reader is cautioned to interpret results with care.

b. Aggregate costs. Benefits of the regulatory alternatives would be accompanied by costs. As described previously, total costs of the regulatory alternatives includes real resource costs, dead-weight consumer surplus losses, dead-weight producer surplus losses (capital value losses), employee dislocation costs, and transaction costs. Two of these welfare costs have not been projected in this analysis. Employee dislocations have been quantified, but their social costs have not been evaluated. Capital value losses incurred by owners of affected capital also have not been evaluated.

c. Benefit-cost comparison. Most public policy alternatives have benefits and costs. Policy evaluation can be difficult because these benefits and costs typically accrue to different individuals. Harberger (Ref. 11) has argued that:

> when evaluating the net benefits or costs of a given action (project, program, or policy), the costs and benefits accruing to each member of the relevant group (e.g., a nation) should normally be added without regard to the individuals to whom they accrue.

This principle dates to Kaldor (Ref. 16) and Hicks (Ref. 12), who argued that a change should be instituted if a potential gain exists so that those who bear the cost could be compensated fully for their loss by the beneficiaries, and the beneficiaries would still be better off than before. Following the Kaldor-Hicks principle, this RIA evaluates benefits and costs to society at large without regard to their incidence.

Table 3 summarizes the benefits and costs of the regulatory alternatives. The difference between the monetized benefits (i.e., avoided corrective costs) and monetized costs (i.e., real resource and dead-weight consumer surplus costs) is compared using the annualized method. This difference is positive for all regulatory alternatives. Thus, each alternative would provide an improvement in economic welfare.

An evaluation of the regulatory alternatives will allow a comparison of the different regulatory levels for the proposed contaminants. Moving from Alternative 2 to 1, respectively leads to virtually no changes in health benefits, but does increase the net monetized benefits by $61 million per year. This suggests that Alternative 2 is preferable to Alternative 1. Moving from Alternative 3 to 1 leads to substantial reduction in health benefits, and yields a decrease in net monetized benefits of $14 million per year.

As explained earlier, this RIA compares the benefits and costs of several regulatory alternatives that were determined by mulitplying estimated chronic toxicity reference levels for the selected compounds, by assumed dilution/attenuation factors of 10, 100 and 1,000. This was necessary, as the toxicity reference levels and the model-generated dilution/attenuation factors that were proposed today could not be generated in time for this analysis. Hence, while this analysis provides estimates of the range of regulatory impacts due to the proposed rule, it does not directly provide an estimate of the impact of the proposed rule. The final RIA which will accompany the promulgation of this rule will analyze the benefits and costs based on the final regulation.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612 whenever an Agency is required to issue for publication in the **Federal Register** any proposed or final rule, it must prepare and make available for comment a Regulatory Flexibility Analysis which describes the impact of the rule on small entities (i.e., small business, small organizations, and small government jurisdictions), unless the Agency's Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities.

The Agency has examined the proposed rule's potential impact on small businesses, and has concluded that this regulation will not have a significant impact on a substantial number of small entities. Again, for the reasons stated in the above section, this analysis does not directly provide an estimate of the impact of the proposed rule on small businesses.

More than 20 percent of the small firms in an industry is considered a substantial number of affected firms. This analysis uses a worst-case approach and assumes that all affected facilities belong to small firms. Three standard measures suggested by EPA guidance are used in determining a significant impact on small firms within an industry. These are (1) when annualized compliance cost as a percentage of total costs of production is greater than 5 percent, (2) when capital costs of compliance represent a significant portion of capital available to small entities, and (3) when annualized compliance cost as a percentage of sales for small firms is more than 10 percentage points higher than annualized compliance costs as a percentage of sales for large firms. For the purposes of this analysis, the costs associated with the first regulatory alternative are used in assessing the significance of impacts on the small firms within affected industries.

In determining the ratios needed for the third measure, annual compliance costs for each industry are apportioned into two groups. One group is used with the receipts for large firms and the other is used with receipts for small firms. The proportion going to each group is equal to the percentage of small and large firms above and below the size standard of 50 employees. EPA has elected not to adopt the Small Business Administration's definition of small business, which is fewer than 500 employees for most SICs, because it would include the majority of plants in the regulated community. Using a

threshold value which includes a majority of the total population obscures any differential impacts on smaller firms. The Agency considers a threshold value of fewer than 50 employees to be a more sensitive index of impacts on small businesses.

For the other two measures, the entire cost for the industry is compared to the aggregate data for small firms as a worst case. This will provide an extreme estimate of the number of industries that have small firms that might experience a significant impact. A "significant portion of capital available to small entities" depends on the average annual portion of new capital expenditures spent on pollution abatement in the last 10 years. If capital costs as a percentage of new capital expenditures are more than 10 percentage points larger than the average percentage that has been spent in the last 10 years, than the capital costs are determined to be significant.

Under this analysis, no SICs are impacted significantly by any of the three measures described. Accordingly, I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The proposed rule contains information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq. Specifically, under 40 CFR 262.40, generators are required to keep records on how the hazard determination was made for the wastes they generate. EPA believes that these information collection requirements are insignificant and has not prepared documentation pursuant to the Paperwork Reduction Act. If necessary, such documentation will be prepared for the promulgated rule.

VIII. Additional Information

A. Chronic Toxicity Reference Levels

1. Introduction

When the EP Toxicity Characteristic (EPTC) was promulgated in May of 1980, the only standards which existed for establishing toxicity levels, and which addressed chronic exposure, were the National Interim Primary Drinking Water Standards (NIPDWS). These addressed 8 metals, 4 insecticides and 2 herbicides, and hence, EP toxicity thresholds were limited to these 14 contaminants. Today, however, chronic toxicity levels have been established for a number of additional toxicants. This Section provides details on the chronic toxicity reference levels which are being proposed for use in expanding the Toxicity Characteristic.

2. Non-Carcinogenic Constituents

Establishing regulatory levels for individual contaminants requires the initial input of a health reference level. Determination of the appropriate level is dependent upon the nature of the toxic effect of the constituent, specifically whether or not the constituent is a carcinogen. Substances which do not cause cancer exert toxicity through mechanisms which exhibit physiological thresholds. Thus a reserve capacity, assumed to exist within an organism, must be depleted or overwhelmed before toxic effects are evident. Simply put, for each non-carcinogen there is some low level of exposure which has no effect on humans. Protection against a chronic toxic effect for a non-carcinogen is achieved by keeping exposure levels at or below the reference dose.

For non-carcinogenic constituents, the Agency is proposing to use Reference Doses (RfDs) as the starting point for establishing chronic toxicity regulatory levels. An RfD is an estimate of a lifetime daily exposure of a substance to the general human population, which appears to be without an appreciable risk of deleterious effects. Conceptually, the RfD is closely related to the term Acceptable Daily Intake. ADIs were first used by the Food and Drug Administration (FDA) in 1954 as specific guidelines and recommendations on the use of "safe" levels of chemicals, such as food additives or food contaminants, for human consumption (Ref. 18). Since their initial use by the FDA, ADIs have been used by other public health agencies in establishing "safe" levels for toxic chemicals. The Food and Agricultural Organization, World Health Organization, and EPA have used ADIs in the process of establishing allowable pesticide residues in foodstuffs (i.e., tolerances). The National Academy of Science and EPA have estimated ADIs for purposes of establishing safe levels of contaminants in drinking water (Ref. 30).

The experimental method for estimating the RfD is to measure the highest test dose of a substance which causes no statistically or biologically significant effect in an appropriately conducted animal bioassay test. This experimental no-observed-adverse-effect-level (NOAEL) is an estimate of the animal population's physiological threshold. The RfD is derived by dividing the NOAEL by a suitable scaling or uncertainty factor.

NOAELs are usually obtained through a chronic study or a 90-day subchronic study. Other available toxicological data, such as metabolism and pharmacokinetics, are used to validate the judgmental choice of a particular dose level as the NOAEL. Confidence in the NOAEL, and therefore in the RfD, is dependent on the quality of the experiment, the number and type of animals tested at each level, the number and range of dose levels, the duration of the study (i.e., chronic vs subchronic), and the nature of the biological endpoint measured (i.e., the severity of the observed effects). The longer the duration of the study, the smaller is the uncertainty factor applied to the NOAEL. Selection of the appropriate uncertainty factor involves scientific judgment and the application of general guidelines (Ref. 30). The derivation of RfDs used for establishing regulatory levels has been evaluated and verified by an Agency workgroup (Ref. 30, 31, and 32).

Table A–1 presents the proposed non-carcinogens and their RfDs. The RfDs in this table are calculated by assuming that a 70 Kg person ingests the compound in 2 liters of drinking water per day.

TABLE A–1.—NON-CARCINOGENS AND RFDS (MG/L)

Compounds	RfD
Carbon disulfide	4
Chlorobenzene	1
o-Cresol	[1] 2
m-Cresol	[1] 2
p-Cresol	[1] 2
1,2-Dichlorobenzene	3
Isobutanol	[1] 10
Methyl ethyl ketone	2
Nitrobenzene	0.02
Pentachlorophenol	1
Phenol	4
Pyridine	0.075
2,3,4,6-Tetrachlorophenol	[1] 0.4
Toluene	10
2,4,5-Trichlorophenol	4

[1] Preliminary estimate of RfD.

For some of the contaminants addressed in today's proposed rule, insufficient toxicological data exists for establishing an RfD. EPA is using preliminary data for isobutanol, ortho-, meta-, and para-cresol, and 2,3,4,6-tetrachlorophenol while appropriate testing continues. The Agency will revise these RfD's and repropose the regulatory levels if necessary. Note also that the Agency intends to propose regulatory levels for nickel and thallium during the period between proposal and promulgation of this rule. The chronic toxicity levels for nickel and thallium are expected to be 0.15 and 0.002 mg/l, respectively.

3. Carcinogenic Constituents

The use of the RfD is appropriate only for non-carcinogenic toxic endpoints. In the absence of chemical specific information on mechanism of action or kinetics, EPA science policy suggests that no threshold dose exists for carcinogens. No matter how small the dose, some risk remains.

The dose-response assessment for carcinogens usually entails an extrapolation from an experimental high dose range and observed carcinogenic effects in an animal bioassay, to a dose range where there are no observed experimental data, by means of a pre-selected dose-response model. The slope of the dose-response curve is determined by this model. EPA's Carcinogen Assessment Group has estimated the carcinogenic potency (i.e., the slope of risk versus exposure) for humans exposed to low dose levels of carcinogens. These potency values indicate the upper 95 percent confidence limit estimate of excess cancer risk for individuals experiencing a given exposure over a 70 year lifetime. In practice, a given dose multiplied by the slope of the curve gives an upper limit estimate of the number estimated to develop cancer. The slope can be used to calculate the upper limit of the dose which gives rise to a given risk level (e.g., one response in a hundred thousand). By specifying the level of risk (no matter how small) one can estimate the lifetime dose corresponding to it. The upper limit of the dose of a carcinogen corresponding to a specific risk level is called the Risk Specific Dose (RSD). To arrive at a starting health limit for a carcinogen, a risk level or range of concern must be specified. EPA proposes to specify a risk level of concern on a weight-of-evidence basis, as described below.

In November 1984, EPA proposed Guidelines for Carcinogen Risk Assessment (49 FR 46294), which described a scheme to characterize carcinogens based on the experimental weight of evidence. This scheme is based on considerations of the quality and adequacy of the experimental data and the kinds of responses induced by a suspect carcinogen. The classification scheme is generally an adaptation of a similar system developed by the International Agency for Research on Cancer (Ref. 13).

EPA's classification of weight-of-evidence system comprises five groups. Group A indicates human carcinogens. This classification is based on sufficient evidence from epidemiological studies of a causal association between human exposure to the substance and cancer. Group B indicates probable human carcinogens. The evidence of human carcinogenicity from epidemiological studies for substances within this group ranges from almost sufficient to inadequate. This group is subdivided into two categories (B_1 and B_2) on the basis of the strength of the human evidence. Where there is limited epidemiologic evidence of carcinogenicity, the carcinogen is categorized as B_1. Where there is no evidence or inadequate evidence from human studies, the carcinogen is categorized as B_2. Group C comprises possible human carcinogens. This group includes agents with limited evidence of animal carcinogenicity. It includes a wide variety of animal evidence. Group D includes agents which cannot be classified because no data or insufficient data are available. Group E includes chemicals for which there are adequate negative animal bioassays. This category indicates no evidence of carcinogenicity in humans.

The Agency regards agents classified in Group A or B as suitable for quantitative risk assessment. The method for quantitation of Group C substances is best judged on a case-by-case basis, since some Group C agents do not have a data base of sufficient quality and quantity to perform a quantitative carcinogenicity risk assessment.

Since carcinogens differ in the weight of evidence supporting the hazard assessment, EPA believes that establishment of a single across-the-board risk level is not appropriate. The Agency proposes to set a reference risk level as a point of departure, along with a risk range keyed to the weight of evidence approach. The dose for known and probable human carcinogenic agents (Classes A and B) would thus be determined at the 10^{-5} risk level.

For the Class C carcinogens (agents with less firm evidence of human carcinogenicity), a risk level of concern of 10^{-4} is being proposed. For those Class C carcinogens for which there is insufficient data to perform a quantitative risk assessment, the dose is calculated on the basis of the lowest threshold effect, with an additional uncertainty factor of ten (e.g., NOAEL/1000). This approach is similar to the approach taken by the Agency on November 13, 1985 in its proposed regulations on enforceable standards for volatile organic chemicals in drinking water (50 FR 46880). The Agency solicits comments on the proposed risk levels and the criteria for distinguishing among the Class C carcinogens for this purpose.

Some agents appear to cause cancer by only one route of exposure or entry. Conclusions about route specificity can only be addressed in circumstances where adequate data exists on carcinogenicity for more than one route of exposure. Where carcinogenicity findings are available from only one route of exposure, the substance is judged to represent a cancer hazard by all routes, unless it can be scientifically demonstrated that the material cannot gain access to target sites by the alternative routes of interest. Where the data from one or more routes are limited, the Agency will evaluate each case on its merits, placing particular emphasis on the scientific evidence.

For a few substances (notably metals), the data base demonstrating that cancer is produced by one route of exposure but not by another is substantial and convincing. An example of a substance whose carcinogenic response is characterized as route-specific is chromium and some of its salts. These substances cause cancer by inhalation but not by other conventional routes of entry. The Agency will regulate such substances as carcinogens only by the relevant route and as non-carcinogens by all other routes.

Table A–2 presents those proposed Toxicity Characteristic contaminants that are carcinogens, the class of the carcinogen, and the Risk Specific Dose.

TABLE A–2.—CARCINOGENIC CONTAMINANTS AND RSD (MG/L) [1]

Contaminant	Carcinogen class	Risk level	Risk specific dose (RSD)
Acrylonitrile	B	10^{-5}	2E-3
Bis (2-chloroethyl) ether.	B	10^{-5}	3E-4
Chlordane	C	10^{-4}	2E-3
Chloroform	B	10^{-5}	5E-3
2,4-Dinitrotoluene	B	10^{-5}	1E-3
Heptachlor	B	10^{-5}	1E-4
Hexachlorobenzene.	B	10^{-5}	2E-4
Hexachlorbutadiene.	C	10^{-4}	5E-2
Hexachloroethane	C	10^{-4}	3E-1
Methylene chloride	B	10^{-5}	6E-1
1,1,1,2-Tetrachloroethane.	C	10^{-4}	7E-1
1,1,2,2-Tetrachloroethane.	C	10^{-4}	2E-2
Tetrachloroethylene.	B	10^{-5}	7E-3
1,1,2-Trichloroethane.	C	10^{-4}	6E-2
2,4,6-Trichlorophenol.	B	10^{-5}	2E-2

[1] Does not include those carcinogenic contaminants for which Drinking Water Standards have been established or proposed (See next section).

4. Use of Existing Agency Health Standards

Under the existing EP Toxicity Characteristic, EPA uses the existing

National Interim Primary Drinking Water Standards, established for eight elemental contaminants and six pesticides, as toxicity thresholds. Today's rule retains these thresholds for the elemental toxicants but proposes compound specific dilution/attenuation factor based thresholds for the organic compounds.

EPA has also been working to establish Drinking Water Standards for additional organic compounds. Final standards for drinking water, the Maximum Contaminant Levels (MCLs), are enforceable and are based upon health, treatment technologies, costs, and other feasibility factors such as the availability of analytical methods. The MCLs are set following an analysis based on health considerations as guided by the Safe Drinking Water Act. This intermediate analysis results in proposed Recommended Maximum Contaminant Levels (PMCLs), which are non-enforceable health based limits. Included in the analysis of the health considerations for determining PMCLs are not only the quality and weight-of-evidence of the supporting toxicological studies, but also examination of absorption rates of specific toxicants, the possibility of nutritionally essential levels for some elements, the existence of route-specific toxicity, the demonstration of other environmental exposures, and finally, the apportionment of the permissible limit of constituent into media specific amounts. In general, final MCLs for non-carcinogens are based on 20% of the relevant RfDs, to account for exposure from other sources (e.g., food and air). Final MCLs for carcinogens are based on risk levels that range from 10^{-4} to 10^{-6}.

Since the above factors have been evaluated for each of the other contaminants in today's rule, PMCL standards derived under the Safe Drinking Water Act can be used as toxicity thresholds. On November 13, 1985 EPA proposed MCLs for eight synthetic volatile organic chemicals (50 FR 46880). EPA is also proposing to use these contaminants and their proposed MCLs, which appear in Table A–3, as toxicity thresholds for the Toxicity Characteristic. After public review and evaluation EPA will promulgate final standards. Should the final MCLs differ from the proposed MCLs, EPA will base regulatory levels for the Toxicity Characteristic on these revised final standards.

TABLE A–3.—PROPOSED MCL'S FOR VOLATILE ORGANIC COMPOUNDS (MG/L)

Contaminant	Proposed MCL
Benzene	0.005
Carbon tetrachloride	0.005
1,4-Dichlorobenzene	0.75
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
Vinyl chloride	0.001

5. Apportionment of Health Limits

The reference dose for humans is the maximum daily dose of a substance that should not be exceeded to assure no adverse health effects over a lifetime of exposure. If exposure occurs by multiple routes, some tolerance level can be established for each route so that the sum of exposures by the individual routes does not exceed the reference dose.

The concept of apportionment of a chemical by medium and by route of exposure is not new. The National Research Council's Safe Drinking Water Committee, calculated a suggested no-adverse-response-level (SNARL) for chronic exposure to a non-carcinogen in drinking water, while incorporating an "arbitrary assumption" that 20 percent of the intake of the chemical was from drinking water (Ref. 20). EPA, in setting PMCLs for chemicals in drinking water, has followed the suggestion of the NRC, and selected a fraction of the RfD, usually 20 percent for synthetic organic chemicals if no empirical data suggest some other fraction is more appropriate (50 FR 46880, Nov. 13, 1985). EPA is proposing to apportion non-carcinogenic contaminants according to the scheme outlined on the following pages.

In evaluating carcinogens, the National Research Council's Safe Drinking Water Committee estimated cancer risks assuming that tap water exposure was both 1 and 20 percent of the total daily intake (Ref. 20). The Agency is however, not proposing to apportion the RSD for carcinogens. For such substances, the RSD is estimated by a procedure which introduces unavoidable uncertainties. The procedure used is deliberately conservative, so that a difference in dose of a factor of two is still well within the margin of uncertainty of the estimated RSD.

Moreover, for carcinogens, the determination of risk is the daily dose averaged over a lifetime. Small variations around the daily dose have little effect on the lifetime risk, providing that the average is not affected. For this reason, a two-fold reduction in the RSD is relatively insignificant. For non-carcinogens, it is possible that not applying a 50 percent reduction (the indirect effect of which is to permit an approximate doubling of the RfD), may cause the level to be exceeded on some or even many days of exposure. Exceeding the level for non-carcinogens may therefore have significant health consequences for some individuals. Thus, there is justification for treating non-carcinogens differently from carcinogens with respect to apportionment.

In the process to developing drinking water standards, EPA considers the contribution from other sources of exposure, such as air and food. When sufficient data are available, the PMCL is determined by subtracting the known contribution of the constituent in food and air from the RfD. Such data is often not available. In these cases, the amount permitted in drinking water is calculated by an estimation of the percentage of exposure attributable to the exposure route of concern. In the absence of adequate exposure data, apportionment is established at 20 percent for synthetic organic chemicals. For inorganic chemicals, an adequate data base generally exists. The actual contribution from other sources can be factored into the PMCL. Where actual data is sparse, however, a 10 percent contribution is estimated for inorganics in drinking water, since sources other than drinking water are more likely carriers for inorganics.

Apportionment has also been used in the risk evaluation procedure developed for EPA's Office of Emergency and Remedial Response to evaluate and manage the risks for specific remedial action sites under the CERCLA (Superfund) law. In this procedure, concentrations are generally apportioned equally in environmental media (e.g., air and water), as an initial basis for calculating a rate of release. If there are significant cost and feasibility differences in controlling exposures via the different pathways, unequal apportionment is selected. This option is appropriate under the CERCLA statute since cost-effectiveness is an integral part of the decision-making process (Ref. 5).

Many of the chemicals EPA regulates are ubiquitous in the environment and may be associated with exposures from other media (e.g., water, food, air). Although available scientific and technical information as well as past

decisions will be considered in reaching decisions on the apportionment of RfDs, sufficient information is not generally available on exposure to reliably quantify the proportion of the RfD that should be allotted for each chemical. When adequate exposure data does not exist, the Agency is proposing to limit population exposure to a 50% fraction of the RfD to reflect consideration of potential and actual exposure from other media.

EPA proposes to apportion reference doses according to the scheme shown in Figure A–1.

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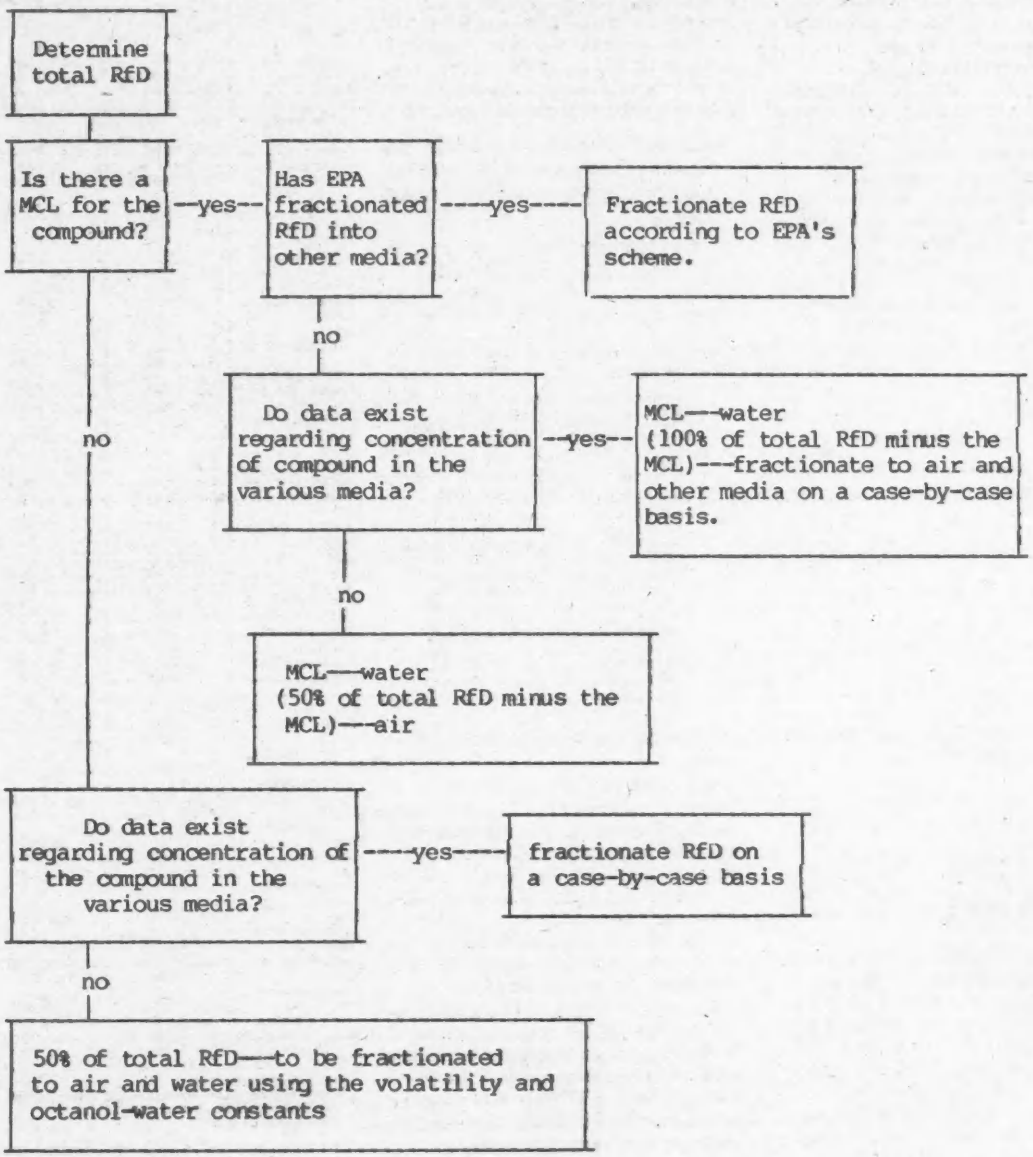
Figure A-1

Flow Chart for Apportionment of RfD



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Basically, this scheme indicates that, if the Agency has adequate data to assess exposure from various routes, then such data will be used to apportion. If on the other hand, adequate data does not exist, EPA will use 50 percent of the RfD and subtract from this 50% the fraction of the RfD allotted to water, using the remainder for air.

EPA proposes to estimate environmental partitioning to air and water according to a simplified scheme using Henry's Law Constant (H_c) and the octanol-water partition coefficient (k_{ow}) for individual contaminants. Henry's Law constant estimates the ratio of a substance between the vapor and dissolved (aqueous) state. The k_{ow} estimates the distribution of a compound between water and octanol, where octanol is intended to represent an organic (lipid) component. Each distribution constant (H_c and k_{ow}) is subdivided into two equal parts according to its range of values, as shown in Table A–4. Each contaminant to be apportioned is classified as having a high or low value according to the general size of its distribution constants, as shown in Table A–5. A relationship between H_c and k_{ow} and the distribution between air and water has been devised using a matrix, as shown in Table A–6.

TABLE A–4.—RANGES AND CLASSIFICATION OF HENRY'S LAW CONSTANTS (K_H) and Octanol-Water Partition Coefficients (k_{ow})

k_H	High in Air $>10^{-5}$	Low in Air $<10^{-5}$.
K_{ow}	Low in water >500	High in water <500.

TABLE A–5.—HENRY'S LAW CONSTANTS AND OCTANOL-WATER PARTITION COEFFICIENTS FOR NON-CARCINOGENIC CONTAMINANTS

Contaminant	Henry's law constant (atm m^3 mol)	Relative concentration in air	Octanol-water coefficient (Kow)	Relative concentration in water
Carbon disulfide	1.68E-02	High	1.45E+02	High.
Chlorobenzene	3.46E-03	High	7.41E+02	Low.
Cresols	5.05E-06	Low	1.41E+02	High.
1,2-Dichlorobenzene	1.88E-03	High	3.80E+03	Low.
Isobutanol	1.23E-05	High	5.50E+00	High.
Methyl ethyl ketone	2.61E-05	High	2.00E+00	High.
Nitrobenzene	2.40E-05	High	7.94E+01	High.
Pentachlorophenol	4.62E-06	Low	1.15E+05	Low.
Phenol	5.02E-06	Low	1.49E+00	High.
Pyridine	1.95E-07	Low	4.79E+00	High.
2,3,4,6-Tetrachlorophenol	4.53E-06	Low	2.14E+04	Low.
Toluene	5.93E-03	High	6.61E+02	Low.
2,4,5-Trichlorophenol	2.84E-05	High	7.24E+03	Low.

TABLE A–6.—DISTRIBUTION MATRIX BETWEEN WATER AND AIR USING K_{ow} and k_H Air [1]

	Low	High
Water:[1]		
Low	Air:water 50:50	Air:water 80:20.
High	Air:water 20:80	Air:water 50:50.

[1] Determined by comparing actual or computed k_H and k_{ow} to ranges in Table A–5.

To construct the matrix, EPA assumed that a compound with equal ranges of k_{ow} and H_c (i.e., high-high or low-low), will distribute between air and water into equal parts. For compounds that exhibit a high range for H_c and a low range for k_{ow}, EPA assumes that the distribution would be in a ratio of 80 to 20, air to water. As an example, given that 50 percent of the total RfD is available for apportionment into water and air, and if Table A–5 indicates a high H_c and a high k_{ow}, the fractionation of the total RfD is 25 percent of the total RfD into each medium. If the contaminant exhibits a low H_c and a high k_{ow}, then 10 percent of the total RfD will distribute to air and 40 percent to water.

EPA believes that the approach outlined above is reasonable in light of the difficulty in obtaining exposure data for many compounds within the statutory time limit. The Agency solicits comments on this general approach. The Agency is also considering a simpler scheme which examines relative concentrations between water and air using Henry's Law constant only.

Table A–7 presents all 52 compounds included for toxicity, their respective health based toxicity thresholds, and the results of any apportionment.[1] The Tables in section VIII(C) contain further information used in establishing the proposed regulatory thresholds.

[1] As explained in other sections of this preamble, 11 compounds are also proposed for inclusion in the Toxicity Characteristic based on their solvent properties.

TABLE A–7.—SUMMARY OF CHRONIC TOXICITY REFERENCE LEVELS

Contaminant	chronic toxicity reference level (mg/l)	Basis	Apportionment (percent)	Resulting value (mg/l)
Acrylonitrile	2E-3	RSD [1]		2E-3
Arsenic	0.05	DWS [2]		0.05
Barium	1.0	DWS		1.0
Benzene	0.005	PMCL [3]		0.005
Bis(2-chloroethyl) ether.	3E-4	RSD		3E-4
Cadmium	0.01	DWS		0.01
Carbon disulfide	4	RfD [4]	25	1.0
Carbon tetrachloride.	0.005	PMCL		0.005
Chlordane	2E-3	RSD		2E-3
Chlorobenzene	1	RfD	10	0.1
Chloroform	5E-3	RSD		5E-3
chromium	0.05	DWS		0.05
o-Cresol	2	RfD	40	0.7
m-Cresol	2	RfD	40	0.7
p-Cresol	2	RfD	40	0.7
2,4-D	0.1	DWS		0.1
1,2-Dichlorobenzene.	3	RfD	10	0.3
1,4-Dichlorobenzene.	0.75	PMCL		0.75
1,2-Dichloroethane	0.005	PMCL		0.005
1,1-Dichloroethylene.	0.007	PMCL		0.007
2,4-Dinitrotoluene	1E-3	RSD		1E-3
Endrin	2E-3	DWS		2E-3
Heptachlor	1E-4	RSD		1E-4
Hexachlorobenzene	2E-4	RSD		2E-4
Hexachlorobutadiene.	5E-2	RSD		5E-2
Hexachloroethane	0.003	RSD		0.003
Isobutanol	10	RfD	25	2.5
Lead	0.05	DWS		0.05
Landane	0.004	DWS		0.004
Mercury	0.002	DWS		0.002
Methoxychlor	0.1	DWS		0.1
Methylene chloride	0.06	RSD		0.06
Methyl ethyl ketone	2	RfD	25	0.5
Nitrobenzene	0.02	RfD	25	0.004
Pentachlorophenol	1	RfD	25	0.25
Phenol	4	RfD	40	1.6
Pyridine	0.075	RfD	40	0.03
Selenium	0.01	DWS		0.01
Silver	0.05	DWS		0.05
1,1,1,2-Trichloroethane.	0.7	RSD		0.7
1,1,2,2-Trichloroethane.	2E-2	RSD		2E-2
Tetrachloroethylene	7E-2	RSD		7E-2
2,3,4,6-Tetrachlorophenol.	0.4	RfD	25	0.1
Toluene	10	RfD	10	1.0
Toxaphene	0.005	DWS		0.005
1,1,1-Tetrachloroethane.	0.2	PMCL		0.2
1,1,2-Tetrachloroethane.	6E-3	RSD		6E-3
Trichloroethylene	0.005	PMCL		0.005
2,4,5-Trichlorophenol.	4	RfD	10	0.4
2,4,6-Trichlorophenol.	2E-2	RSD		2E-2
2,4,5-TP (Silvex)	0.01	DWS		0.01
Vinyl chloride	0.001	PMCL		0.001

[1] RSD = Risk Specific Dose.
[2] DWS = National Interim Primary Drinking Water Standard.
[3] PMCL = Proposed Maximum Contaminant Level.
[4] RfD = Reference Dose.

B. Ground Water Transport Equation

1. Introduction

Under the framework presented in this proposal, EPA will establish regulatory levels for individual chemical constituents contained in hazardous wastes. These levels are expressed as

maximum acceptable concentrations for individual constituents in extracts of wastes. The extract concentration is assumed to be the same as the leachate concentration entering the ground water since the scenario assumes the bottom of the landfill lies directly over the saturated zone. EPA has developed a quantitative ground water modeling procedure to evaluate potential impacts on ground water and to establish regulatory levels for individual constituents. The proposed regulatory level-setting procedure involves a back-calculation from a point of potential exposure to a point of release from a hypothetical sanitary landfill. Specifically, the model assesses the long-term chemical flux or leaching of toxicants to the ground water from a waste disposed in a Subtitle D sanitary landfill. The beginning point of the back-calculation is a measurement point at a specified distance directly downgradiant from the disposal unit.

This procedure incorporates the toxicity, mobility, the persistence of constituents, and also the long-term uncertainties associated with land disposal.

The toxicity of constituents is considered by specifying a regulatory level at the point of measurement (i.e., drinking water well) and back-calculating to the maximum acceptable leachate concentration that will not exceed the specified standard. The mobility of constituents is considered through application of the TCLP, and for organics, through incorporation of sorption as a delay mechanism. The inclusion of sorption in the ground water transport model is important only for organic constituents which degrade.

The persistence of constituents is incorporated into the ground water model for organics by considering hydrolysis. Metals do not degrade, so no degradation is assumed. Speciation of metals in ground water is an important factor in the extent to which metals migrate. The Agency is studying the use of the MINTEQ speciation model in order to permit calculating element specific dilution/attentuation factors. The Agency has not been able to complete these studies yet, and therefore will continue to employ a standard attenuation factor of 100. Once development of the fate and transport equation approach for the elemental species is completed, element specific factors will be proposed.

The proposed ground water model accounts for most of the major physical and chemical processes known to influence movement and transformation of chemicals in simple, homogenous and isotropic porous media under steady flow conditions. The mechanisms considered include advection, hydrodynamic dispersion in the longitudinal, lateral, and vertical dimensions, adsorption, and chemical degradation. Mechanisms not considered in the model include biodegradation, effects of sinks and sources, and dilution of constituents within drinking water wells.

2. Model Assumptions

The analytical solution described below is based on a number of key assumptions pertaining to the features of ground water flow and the properties of the porous medium. These assumptions include the following:

a. Saturated soil conditions (no attenuation of chemicals in the unsaturated zone).

b. Flow regions of infinite extent in the longitudinal direction, semi-infinite extent in the lateral direction.

c. All aquifer properties are homogeneous, isotropic and of constant thickness.

d. Groundwater flow is uniform and continuous in direction and velocity.

e. First-order decay is limited to hydrolysis and the byproducts of hydrolysis are assumed to be non-hazardous.

f. Sorption behaves linearly.

g. Infinite source—supplies a constant mass flux rate.

h. Ground water recharge is accounted for.

i. The ground water is initially free of contamination.

j. The receptor well is directly in line with the source and the ground water flow.

The effect of the first assumption is to presume that a waste is placed directly at the top of the saturated zone. Since EPA has found that a significant number of hazardous waste landfills are located within a few feet of an aquifer, and since Subtitle D facilities are generally sited in similar environments, this assumption is believed to be reasonable. This worst-case assumption predicts that no attenuation occurs during the migration of constituents in leachates to the underlying aquifer.

The second assumption of infinite and semi-infinite flow regions in the longitudinal and lateral direction, respectively, is appropriate for all simplified analytical ground water flow models. (The term semi-infinite refers to the fact that once a leachate reaches an aquifer, although theoretically it can disperse in the lateral direction to an infinite degree, for all practical purposes there is a point at which further dispersion has little effect on the concentration of contaminants within a plume. Although further dispersion would still be greater than zero, its effect is insignificant.) Aquifers have finite areal extent, however, and may be confined by impermeable layers. If an aquifer is confined by an impermeable layer in the longitudinal or lateral fields, this assumption will underestimate downgradient concentrations.

The assumption of homogeneous and isotropic aquifer properties is rarely encountered in the field, but the availability of data and the generic nature of this analysis requires the use of a homogeneous and isotropic approximation. Also, this assumption is usually employed if the solution of the problem is obtained by analytical techniques.

A uniform flow velocity, the fourth assumption, presumes that the water volume entering from the source is not large enough to affect the natural ground water gradient. This assumption is appropriate for simplified analytical solutions. In situations where the ground water flow system contains sinks or sources (e.g., pumping or injection wells), drastic changes in the velocity distribution will occur. Under this situation that steady-state down gradient contaminant concentrations may be underestimated.

Hydrolysis of first-order kinetics, the fifth assumption, is the only mechanism for transformation considered in the proposed model. While other transformation mechanisms, such as biodegradation and oxidation are also important, the Agency's present understanding of these mechanisms does not yet permit a kinetic representation of these processes within the system modeled. The effects, relative importance, and interactions of these processes in the ground water environment are not well understood and are under investigation.

In general, all transformations are dependent upon both the chemical constituent and the prevailing environmental properties. For hydrolysis, ground water pH and temperature must be known. The Agency's analysis to date has identified more than 20,000 measurements for pH and temperature from which distribution functions can be assigned for purposes of evaluating variation and uncertainty. Similar data describing microbial populations, metabolizable carbon sources, etc., are not generally available. The Agency believes that given this limited understanding of the factors influencing biodegradation and oxidation in the ground water environment, prudence dictates that these processes not be included in the

model. By including only hydrolysis in the model, the Agency is being conservative.

The seventh assumption of an infinite source represents a worst case. To ensure that waste disposal is protective of human health and the environment in all possible situations (which do not address the total amount of waste disposed), the Agency believes it is prudent to adopt this conservative assumption.

The assumption of dilution of the contaminant plume by ground water recharge accounts for a process known to occur in the environment. Ground water recharge leads to further dilution of the contaminant plume as it moves downgradient from the facility. EPA recognizes that it is difficult to develop precise estimates of ground water recharge for incorporation into a generic mode. Data is available, however, from which rough estimates can be developed.

The assumption of placement of a well in the exact position to receive the highest concentration of a contaminant represents an absolute worst case. The Agency believes this assumption is appropriate for use in the model since it is possible that some drinking water wells are directly in line with Subtitle D land disposal units.

3. Cumulative Frequency Distribution

Through use of a Monte Carlo computer simulation, the ground water transport equation results in a cumulative frequency distribution. The cumulative frequency distribution provides estimates of the likelihood or probability that the target concentration level (e.g., reference dose), would not be exceeded, given the range and distribution of the values that may be expected for each of the various environmental parameters known to affect such concentrations. For the purposes of this regulation, EPA is proposing to use the 85th cumulative percentile. EPA believes that using the 85th percentile will provide a reasonable balance between the need to identify the majority of truly hazardous waste as hazardous, while at the same time minimizing the false identification of non-hazardous waste as hazardous. Note, however, that EPA is considering the use of both the 80th and the 90th percentile for this regulation. For non-degrading compounds, the 80th and 90th percentiles produce dilution/attenuation factors of 22 and 10, respectively.

The regulatory levels being proposed today are based on the 85th cumulative frequency percentile. As indicated previously, this does not necessarily mean that EPA is unconcerned about wastes which may exceed levels based on some higher percentile (e.g., 90 percent). Specific wastes which the Agency finds not to be hazardous using the regulatory levels based on the 85th percentile, but which could exceed thresholds based on some higher percentile, and which are determined to pose a hazard to ground water, may be specifically listed by the Agency as hazardous wastes under §§ 261.31 or 261.32.

4. Further Information

The Agency has proposed to use the same basic ground water transport equation and health effects thresholds for use in the Land Disposal Restrictions Rule (51 FR 1603), proposed on January 14, 1986. Differences in the equations have been introduced for the proposed Land Disposal Restrictions Rule, to account for the additional engineering controls required (e.g., landfill caps), when managing wastes as hazardous in a Subtitle C hazardous waste facility, and the higher standards of confidence required under the HSWA for determining that a waste is suitable for land disposal.

While this proposal outlines the equation's proposed use in the Toxicity Characteristic, considerably more detail concerning this equation is provided in the preamble section to the proposed Land Disposal Restrictions Rule. The reader is referred to that preamble, and the reference noted therein, for further information on the equation and the data used in running it. The computer printouts obtained as a result of running the equation on the compounds will be included in the Toxicity Characteristic docket.

C. Tables of Proposed Contaminants and Data Used to Develop Regulatory Levels

TABLE C–1.—TOXICITY CHARACTERISTIC CONTAMINANTS AND LEVELS

HWNO[1] and contaminant	Casno[2]	Regulatory level (mg/l)
D018—Acrylonitrile	107–13–1	5.0
D004—Arsenic	7440–38–2	5.0
D005—Barium	7440–39–3	100
D019—Benzene	71–43–2	0.07
D020—Bis(2-chloroethyl)ether	111–44–4	0.05
D006—Cadmium	7440–43–9	1.0
D021—Carbon disulfide	75–15–0	14.4
D022—Carbon tetrachloride	56–23–5	0.07
D023—Chlordane	57–74–9	0.03
D024—Chlorobenzene	108–90–7	1.4
D025—Chloroform	67–66–3	0.07
D007—Chromium	1333–82–0	5.0
D026—o-Cresol	95–48–7	10.0
D027—m-Cresol	108–39–4	10.0
D028—p-Cresol	106–44–5	10.0
D016—2,4–D	94–75–7	1.4
D029—1,2-Dichlorobenzene	95–50–1	4.3
D030—1,4-Dichlorobenzene	106–46–7	10.8
D031—1,2-Dichloroethane	107–06–2	0.40
D032—1,1-Dichloroethylene	75–35–4	0.1
D033—2,4-Dinitrotoluene	121–14–2	0.13
D012—Endrin	72–20–8	0.003
D034—Heptachlor (and hydroxide)	76–44–8	0.001
D035—Hexachlorobenzene	118–74–1	0.13
D036—Hexachlorobutadiene	87–68–3	0.72
D037—Hexachloroethane	67–72–1	4.3
D038—Isobutanol	78–83–1	25
D008—Lead	7439–92–1	5.0
D013—Lindane	58–89–9	0.06
D009—Mercury	7439–97–6	0.2
D014—Methoxychlor	72–43–5	1.4
D039—Methylene chloride	75–09–2	8.6
D040—Methyl ethyl-ketone	78–93–3	7.2
D041—Nitrobenzene	98–95–3	0.13
D042—Pentachlorophenol	87–86–5	3.6
D043—Phenol	108–95–2	14.4
D044—Pyridine	110–86–1	5.0
D010—Selenium	7782–49–2	1.0
D011—Silver	7440–22–4	5.0
D045—1,1,1,2-Tetrachloroethane	630–20–6	10.0
D046—1,1,2,2-Tetrachloroethane	79–34–5	1.3
D047—Tetrachloroethylene	127–18–4	0.1
D048—2,3,4,6-Tetrachlorophenol	58–90–2	1.5
D049—Toluene	108–88–3	14.4
D015—Toxaphene	8001–35–2	0.07
D050—1,1,1,-Trichloroethane	71–55–6	25
D051—1,1,2-Trichloroethane	79–00–5	1.2
D052—Trichloroethylene	79–01–6	0.07
D053—2,4,5-Trichlorophenol	95–95–4	5.8
D054—2,4,6-Trichlorophenol	88–06–2	0.30
D017—2,4,5-TP (Silvex)	93–76–5	0.14
D055—Vinyl chloride	75–01–4	0.05

[1] Hazardous Waste Identification Number.
[2] Chemical Abstracts Registry Number.

TABLE C–2.—METHODS AND QUANTITATION LIMITS FOR TOXICITY CHARACTERISTIC CONTAMINANTS

Contaminant	Vol.[1]	SW–846 methods [2]	Detection limit (mg/l) [3]	Quantitation limit (mg/l) [4]
Acrylonitrile	V	5030/8240	1.0	5.0
Arsenic		7060, 7061	0.005	0.025
Barium		6010, 7080, 7081	0.01	0.05
Benzene	V	5030/8240	0.01	0.05
Bis(2-chloroethyl)ether		3510/8270	0.01	0.05
Cadmium		6010, 7130, 7131	0.01	0.05
Carbon disulfide	V	5030/8240	1.0	5.0
Carbon tetrachloride	V	5030/8240	0.01	0.05
Chlordane		8080	0.0005	0.0025

TABLE C–2.—METHODS AND QUANTITATION LIMITS FOR TOXICITY CHARACTERISTIC CONTAMINANTS—Continued

Contaminant	Vol.[1]	SW-846 methods [2]	Detection limit (mg/l) [3]	Quantitation limit (mg/l) [4]
Chlorobenzene	V	5030/8240	0.01	0.05
Chloroform	V	5030/8240	0.01	0.05
Chromium		6010, 7190, 7191	0.02	0.10
o-Cresol		3510/8270	0.10	0.50
M-Cresol		3510/8270	0.10	0.50
P-Cresol		3510/8270	0.10	0.50
2,4-D		8150	0.005	0.025
1,2-Dichlorobenzene		3510/8270	0.025	0.125
1,4-Dichlorobenzene		3510/8270	0.025	0.125
1,2-Dichloroethane	V	5030/8240	0.01	0.05
1,1-Dichloroethylene	V	5030/8240	0.01	0.05
2,4-Dinitrotoluene		3510/8270	0.025	0.125
Endrin		8080	0.0001	0.0005
Heptachlor (and its hydroxide)		8080	0.0001	0.0005
Hexachlorobenzene		3510/8270	0.025	0.125
Hexachlorobutadiene		3510/8270	0.025	0.125
Hexachloroethane		3510/8270	0.025	0.125
Isobutanol	V	5030/8240	1.0	5.0
Lead		6010, 7420, 7421	0.08	0.40
Lindane		8080	0.0001	0.0005
Mercury		7470, 7471	0.0004	0.002
Methoxychlor		8080	0.0005	0.0025
Methylene chloride	V	5030/8240	0.025	0.125
Methyl ethyl ketone	V	5030/8240	0.01	0.05
Nitrobenzene		3510/8270	0.025	0.125
Pentachlorophenol		3510/8270	0.01	0.05
Phenol		3510/8270	0.025	0.125
Pyridine		3510/8270	1.0	5.0
Selenium		6010, 7740, 7741	0.01	0.05
Silver		6010, 7760, 7761	0.01	0.05
1,1,1,2-Tetrachloroethane	V	5030/8240	0.01	0.05
1,1,2,2-Tetrachloroethane	V	5030/8240	0.01	0.05
Tetrachloroethylene	V	5030/8240	0.01	0.05
2,3,4,6-Tetrachlorophenol		3510/8270	0.10	0.50
Toluene	V	5030/8240	0.01	0.05
Toxaphene		8080	0.005	0.025
1,1,1-Trichloroethane	V	5030/8240	0.01	0.05
1,1,2-Trichloroethane	V	5030/8240	0.01	0.05
Trichloroethylene	V	5030/8240	0.01	0.05
2,4,5-Trichlorophenol		3510/8270	0.05	0.25
2,4,6-Trichlorophenol		3510/8270	0.05	0.25
2,4,5-TP (Silvex)		8150	0.005	0.025
Vinyl chloride	V	5030/8240	0.01	0.05

[1] The "V" indicates the compound to be volatile and requires the use of the Zero-Headspace Extractor.
[2] Test Methods for Evaluating Solid Waste—Physical/Chemical Methods WS–846. Second Edition. U.S. Environmental Protection Agency, July 1982. Methods for phenolic compounds being evaluated.
[3] Detection limits in TCLP extract. Detection limits are approximate.
[4] Quantitation limits are assumed to be 5 times the detection limit.

TABLE C–3.—CHRONIC TOXICITY REFERENCE LEVELS FOR TOXICITY CHARACTERISTIC CONTAMINANTS

Contaminant	Chronic toxicity reference level (mg/l) [1]	LOG Kow [2]	Kh(atm m³/mol) [3]	Apportionment (percent) [4]	Apportioned reference level (mg/l) [5]
Acrylonitrile	0.002(RSD)				0.002
Arsenic	0.05(DWS)				0.05
Barium	1.0(DWS)				1.0
Benzene	0.005(PMCL)				0.005
Bis(2-chloroethyl)ether	0.0003(RSD)				0.0003
Cadmium	0.01(DWS)				0.01
Carbon disulfide	4(RfD)	2.16	1.68E–2	25	1.0
Carbon tetrachloride	0.005(PMCL)				0.005
Chlordane	0.002(RSD)				0.002
Chlorobenzene	1(RfD)	2.87	3.46E–3	10	0.1
Chloroform	0.005(RSD)				0.005
Chromium	0.05(DWS)				0.05
o-Cresol	2(RfD)	2.15	5.05E–6	40	0.7
m-Cresol	2(RfD)	2.15	5.05E–6	40	0.7
p-Cresol	2(RfD)	2.15	5.05E–6	40	0.7
2,4-D	0.1(DWS)				0.1
1,2-Dichlorobenzene	3(RfD)	3.56	1.88E–3	10	0.3
1,4-Dichlorobenzene	0.75(PMCL)				0.75
1,2-Dichloroethane	0.005(PMCL)				0.005
1,1-Dichloroethylene	0.007(PMCL)				0.007
2,4-Dinitrotoluene	0.001(RSD)				0.001
Endrin	0.0002(DWS)				0.0002
Heptachlor (and hydroxide)	0.0001(RSD)				0.0001
Hexachlorobenzene	0.0002(RSD)				0.0002
Hexachlorobutadiene	0.05(RSD)				0.05
Hexachloroethane	0.3(RSD)				0.3
Isobutanol	10(RfD)	0.74	1.23E–5	25	2.5
Lead	0.05(DWS)				0.05
Lindane	0.004(DWS)				0.004
Mercury	0.002(DWS)				0.002
Methoxychlor	0.10(DWS)				0.1
Methylene chloride	0.6(RSD)				0.6
Methyl ethyl ketone	2(RfD)	0.3	2.61E–5	25	0.5
Nitrobenzene	0.02(RfD)	1.90	2.40E–5	25	0.004

TABLE C-3.—CHRONIC TOXICITY REFERENCE LEVELS FOR TOXICITY CHARACTERISTIC CONTAMINANTS—Continued

Contaminant	Chronic toxicity reference level (mg/l)[1]	LOG Kow[2]	Kh(atm m³/mol)[3]	Apportionment (percent)[4]	Apportioned reference level (mg/l)[5]
Pentachlorophenol	1(RfD)	5.06	4.62E-6	25	0.25
Phenol	4(RfD)	1.49	4.5E-6	40	1.0
Pyridine	0.075(RfD)	0.66	1.95E-7	40	0.03
Selenium	0.01(DWS)				0.01
Silver	0.05(DWS)				0.05
1,1,1,2-Tetrachloroethane	0.7(RSD)				0.7
1,1,2,2-Tetrachloroethane	0.02(RSD)				0.02
Tetrachloroethylene	0.007(RSD)				0.007
2,3,4,6-Tetrachlorophenol	0.4(RfD)	4.33	4.53E-6	25	0.1
Toluene	10(RfD)	2.82	5.93E-3	10	1.0
Toxaphene	0.005(DWS)				0.005
1,1,1-Trichloroethane	0.2(PMCL)				0.2
1,1,2-Trichloroethane	0.06(RSD)				0.06
Trichloroethylene	0.005(PMCL)				0.005
2,4,5-Trichlorophenol	4(RfD)	3.66	2.84E-5	10	0.4
2,4,6-Trichlorophenol	0.02(RSD)				0.02
2,4,5-TP (Silvex)	0.01(DWS)				0.01
Vinyl chloride	0.001(PMCL)				0.001

[1] DWS = National Interim Primary Drinking Standard.
PMCL = Proposed Maximum Contaminant Level (Proposed standard in drinking water).
RfD = Reference Dose (non-carcinogen).
RsD = Risk Specific Dose (carcinogen).
[2] LOG Octanol Water Partition Coefficient.
[3] Henry's Law Constant.
[4] RfD's are the only Chronic Toxicity Reference Levels which are apportioned (See Section VIII(A)).
[5] Value by which Dilution/Attenuation factor is multiplied (See Tables C-4 and C-5).

TABLE C-4.—DILUTION/ATTENUATION FACTOR FOR TOXICITY CHARACTERISTIC CONTAMINANTS

	Hydrolysis rate constants				
	LOG Kow[1]	Ka[2]	Kb[2]	Kn[2]	D/A factor[3]
Contaminant:					
Acrylonitrile	0.07	>1/Yr	>1/Yr	>1/Yr	14.4
Arsenic					100.0
Barium					100.0
Benzene	2.13	NHYF[4]	NHYF	NHYF	14.4
Bis(2-chloroethyl)ether	1.04	NH[5]	NH	8E-5/Hr	14.4
Cadmium					100.0
Carbon disulfide	2.16	NH	>10/Yr	NH	14.4
Carbon tetrachloride	2.96	NH	NH	NH	14.4
Chlordane	[7]5.48	NH	>10/Yr	NH	14.4
Chlorobenzene	2.87	NH	1E-6/Hr	NH	14.4
Chloroform	1.96	NH	0.23/Hr	3E-9/Hr	14.4
Chromium					100.0
o-Cresol	2.15	NHYF	NHYF	NHYF	14.4
m-Cresol	2.15	NHYF	NHYF	NHYF	14.4
p-Cresol	2.15	NHYF	NHYF	NHYF	14.4
2,4-D	2.70	NHYF	NHYF	NHYF	14.4
1,2-Dichlorobenzene	3.56	NH	1E-5/Hr	NH	14.4
1,4-Dichlorobenzene	3.56	NLFG[6]	NLFG	NLFG	14.4
1,2-Dichloroethane	1.40	NH	NH	7.2E-5/Hr	75.0
1,1-Dichloroethylene	2.13	NLFG	NLFG	NLFG	14.4
2,4-Dinitrotoluene	2.30	NLFG	NLFG	NLFG	14.4
Endrin	[7]3.54	>1/Yr	>1/Yr	>1/Yr	14.4
Heptachlor (and its hydroxide)	[7]4.81	NLFG	NLFG	NLFG	14.4
Hexachlorobenzene	6.42	<1/Yr	<1/Yr	<1/Yr	14.4
Hexachlorobutadiene	4.24	NLFG	NLFG	NLFG	14.4
Hexachloroethane	4.22	>1/Yr	>1/Yr	>1/Yr	14.4
Isobutanol	0.74	>1/Yr	>1/Yr	>1/Yr	14.4
Lead					100.0
Lindane	3.40	>1/Yr	>1/Yr	>1/Yr	14.4
Mercury					100.0
Methoxychlor	[7]4.30	NH	1.4/Hr	7.5E-5/Hr	14.4
Methylene chloride	1.26	NH	NH	1.18E-8/Hr	14.4
Methyl ethyl ketone	0.3	NLFG	NLFG	NLFG	14.4
Nitrobenzene	1.90	NLFG	NLFG	NLFG	14.4
Pentachlorophenol	5.06	NH	>1E-4/Hr	NH	14.4
Phenol	1.49	NHYF	NHYF	NHYF	14.4
Pyridine	0.66	NLFG	NLFG	NLFG	14.4
Selenium					100.0
Silver					100.0
1,1,1,2-Tetrachloroethane	2.61	NH	1.3/Hr	2.2E-7/Hr	14.4
1,1,2,2-Tetrachloroethane	2.42	NH	2.6E+3/Hr	NH	65.0
Tetrachloroethylene	3.03	NLFG	NLFG	NLFG	14.4
2,3,4,6-Tetrachlorophenol	4.33	NH	1E-5/Hr	NH	14.4
Toluene	2.82	NHYF	NHYF	NHYF	14.4
Toxaphene	[7]5.30	NH	>10/Yr	NH	14.4
1,1,1-Trichloroethane	2.50	NH	NH	1.1E-4/Hr	150.0
1,1,2-Trichloroethane	1.91	NH	13/Hr	4.3E-7/Hr	20.0
Trichloroethylene	2.28	NLFG	NLFG	NLFG	14.4
2,4,5-Trichlorophenol	3.86	NH	1E-5/Hr	NH	14.4
2,4,6-Trichlorophenol	3.58	NH	1E-5/Hr	NH	14.4
2,4,5-TP (Silvex)	3.45	NLFG	NLFG	NLFG	14.4
Vinyl chloride	1.38	NH	1E-5/Hr	1E-7/Hr	14.4

[1] LOG Octanol Water Partition Coefficient.
[2] Acid base and neutral hydrolysis rate constants.
[3] Dilution/Attenuation Factor derived from ground water transport equation.
[4] NHYF = No Hydrolyzable Functional Group.
[5] NH = Negligible Hydrolysis.
[6] NLFG = No Liable Functional Group.
[7] Estimated value.

TABLE C–5.—REGULATORY LEVELS FOR TOXICITY CHARACTERISTIC CONTAMINANTS

	Apportioned chronic toxicity reference level (mg/l)[1]	D/A factor[2]	Calculated level (mg/l)[3]	Quantitation limit (mg/l)[4]	Regulatory level (mg/l)[5]
Contaminant:					
Acrylonitrile	0.002	14.4	0.029	5.0	(5.0)
Arsenic	0.05	100.0	5.0	0.025	5.0
Barium	1.0	100.0	100	0.05	100
Benzene	0.005	14.4	0.072	0.05	0.07
Bis(2-chloroethyl)ether	0.0003	14.4	0.004	0.05	(0.05)
Cadmium	0.01	100.0	1.0	0.05	1.0
Carbon disulfide	1.0	14.4	14.4	5.0	14.4
Carbon tetrachloride	0.005	14.4	0.072	0.05	0.07
Chlordane	0.002	14.4	0.029	0.0025	0.03
Chlorobenzene	0.1	14.4	1.44	0.05	1.4
Chloroform	0.005	14.4	0.072	0.05	0.07
Chromium	0.05	100.0	5.0	0.1	5.0
o-Cresol	0.7	14.4	10.08	0.5	10.0
m-Cresol	0.7	14.4	10.08	0.5	10.0
p-Cresol	0.7	14.4	10.08	0.5	10.0
2,4-D	0.1	14.4	1.44	0.025	1.4
1,2-Dichlorobenzene	0.3	14.4	4.32	0.125	4.3
1,4-Dichlorobenzene	0.75	14.4	10.8	0.125	10.8
1,2-Dichloroethane	0.005	75.0	0.40	0.05	0.40
1,1-Dichloroethylene	0.007	14.4	0.1008	0.05	0.1
2,4-Dinitrotoluene	0.001	14.4	0.0144	0.125	(0.13)
Endrin	0.0002	14.4	0.0029	0.0005	0.003
Heptachlor (and hydroxide)	0.0001	14.4	0.0014	0.0005	0.001
Hexachlorobenzene	0.0002	14.4	0.0029	0.125	(0.13)
Hexachlorobutadiene	0.05	14.4	0.72	0.125	0.72
Hexachloroethane	0.3	14.4	4.32	0.125	4.3
Isobutanol	2.5	14.4	36	5.0	36
Lead	0.05	100.0	5.0	0.4	5.0
Lindane	0.004	14.4	0.0576	0.0005	0.06
Mercury	0.002	100.0	0.2	0.002	0.2
Methoxychlor	0.1	14.4	1.44	0.0025	1.4
Methylene chloride	0.6	14.4	8.64	0.125	8.6
Methyl ethyl ketone	0.5	14.4	7.2	0.05	7.26
Nitrobenzene	0.004	14.4	0.0576	0.125	(0.13)
Pentachlorophenol	0.25	14.4	3.6	0.05	3.6
Phenol	1.0	14.4	14.4	0.125	14.4
Pyridine	0.03	14.4	0.432	5.0	(5.0)
Selenium	0.01	100.0	1.0	0.05	1.0
Silver	0.05	100.0	5.0	0.05	5.0
1,1,1,2-Tetrachloroethane	0.7	14.4	10.08	0.05	10.0
1,1,2,2-Tetrachloroethane	0.02	65.0	1.3	0.05	1.3
Tetrachloroethylene	0.007	14.4	0.1008	0.05	0.1
2,3,4,6-Tetrachlorophenol	0.10	14.4	1.44	0.5	1.5
Toluene	1.0	14.4	14.4	0.05	14.4
Toxaphene	0.005	14.4	0.072	0.025	0.07
1,1,1-Trichloroethane	0.2	150.0	30	0.05	30
1,1,2-Trichloroethane	0.06	20.0	1.2	0.05	1.2
Trichloroethylene	0.005	14.4	0.072	0.05	0.07
2,4,5-Trichlorophenol	0.4	14.4	5.76	0.25	5.8
2,4,6-Trichlorophenol	0.02	14.4	0.288	0.25	0.3
2,4,5-TP (Silvex)	0.01	14.4	0.144	0.025	0.14
Vinyl chloride	0.001	14.4	0.0144	0.05	(0.05)

[1] See Table C–3.
[2] See Table C–4.
[3] Apportioned Chronic Toxicity Reference Level multiplied by Dilution/Attenuation Factor.
[4] See Table C–2.
[5] If the quantitation limit is greater than the calculated level, the quantitation limit becomes the (technology based) regulatory level (indicated by level in parenthesis).

D. Development and Evaluation of the TCLP

1. Introduction

This Section provides detailed information on how the TCLP was developed and evaluated. Still more detailed information regarding the TCLP is available in a Background Document that EPA has prepared for the TCLP (Ref. 33).

2. Experimental Design

EPA, through an interagency agreement w ith the U.S. Department of Energy's Oak Ridge National Laboratory (ORNL), has conducted a research program designed to develop an improved leaching test, the TCLP. The TCLP development program was split up into three phases. Phases I and II, and part of Phase III have been completed. Phase I consisted of an initial data gathering effort in which a number of wastes were leached with a leachate derived from municipal refuse. The wastes were also extracted with a variety of laboratory leaching media and contact procedures. Phase I was designed to narrow the universe of potential candidate leaching procedures. In Phase II, additional wastes were leached and the candidate procedures refined into the draft TCLP. During this phase of testing, public assistance and review of the draft was solicited.

The overall approach employed in Phase I was as follows:

a. Large-scale field lysimeters were filled with domestic and commercial refuse and used to generate a municipal waste leachate (MWL).

b. The MWL was used to leach four industrial solid wastes in large columns.

c. The leachate concentration of a number of organic and inorganic species that were present in each waste were measured over time.

d. A total of 34 laboratory leaching tests were run on the four wastes to assess their accuracy in modeling the results of the lysimeter/column experiments. These tests included both column and batch procedures using four leaching media (i.e, sodium acetate buffer, carbonic acid, water, and actual municipal waste leachate), and four media to waste ratios (i.e., 2.5, 5, 10, and 20 to 1). In addition, the EP and a sequential batch leaching procedure were also investigated.

e. Target Concentrations (TCs), were established for each constituent based on the lysimeter/column leaching curves, by calculating the amount of constituent leached over a specific leaching interval (i.e., an amount of leachate equal to twenty times the weight of the original industrial solid waste—twenty to one liquid to solid ratio).

f. Laboratory leaching test results were compared to the TCs, and the two laboratory tests that best replicated lysimeter results were selected for further evaluation in Phase II.

Phase II of the program involved extensive evaluation and verification of Phase I:

a. Seven wastes were leached in essentially the same experimental arrangement as used in Phase I.

b. Each waste was subjected to the two "best" leaching procedures selected from Phase I, as well as the EP.

c. The single procedure which best satisfied the objectives presented in the body of this preamble was selected as the draft TCLP.

d. the draft TCLP was then circulated to interested members of industry, academia, environmental groups, and other with interest and experience conducting such tests, for comment.

Phase III of the program involved subjecting the draft TCLP to an evaluation of ruggedness and precision. This work has been partially completed and the design and results to date are summarized further in this Section. Another part of Phase III which is currently ongoing is a multi-laboratory collaborative evaluation of the draft TCLP. (The TCLP has evolved to its present form in response to both Agency activities as well as to comments received on the circulated drafts.) The following sections present the experimental program and the results.

3. Results of Phase I

The ORNL Phase I report explains in detail the experimental approach and describes the results obtained during the first phase of testing (Ref. 6). Briefly, lysimeter leachate target concentrations were established based on both practical considerations and the need to represent a mid-to-long term leaching interval or exposure period. This was important as the purpose of the leaching test is primarily to evaluate the migratory potential of chronically toxic organic compounds (Ref. 17). (Use of chronic toxicity values are discussed in more detail elsewhere in this preamble.)

The various laboratory procedures tested were then compared as to their ability to reproduce the lysimeter leachate target concentrations. The absolute value of the percentage difference for each target concentration/leaching test concentration pair was determined, averaged for each leaching procedure, and then each procedure was ranked from the lowest to highest difference and evaluated for significance using Duncan's multiple range test. These analyses identified most of the laboratory procedures as being equally predictive of lysimeter leachate target concentrations, particularly where the organics were concerned.

No single procedure will be able to accurately predict leachate concentrations for all compounds in all waste matrices. EPA therefore picked the procedures which seemed to most closely model lysimeter leachate target concentrations using the absolute value of the percentage difference. Factors other than average percentage difference, such as ease and expense of operation, applicability to both organics and inorganics, and applicability to biological testing, were also taken into account. These factors were identified in the body of the preamble as objectives for the TCLP.

On the basis of all these considerations, two procedures, similar in concept and operation to the current EP, were selected for further work in Phase II. Both of these procedures use a 20:1 liquid to solid ratio (i.e., an amount of extraction fluid equal to twenty times the weigth of the solid phase of the waste) and involve a batch-type extraction. One procedure uses a 0.1 N pH 5 sodium acetate buffer solution as the extraction medium, and the other uses carbon dioxide (CO_2) saturated deionized distilled water (i.e., carbonic acid).

4. Peer Reviews

A number of peer reviews were conducted at various stages of the TCLP development program. The general tone of these reviews was always strongly positive. One such review which deserves attention, primarily because it had profound effect on the way the TCLP development data was analyzed, is a review conducted by the Agency's Science Advisory Board (Ref. 29).

At the end of Phase I, the Environmental Engineering Committee of the Science Advisory Board (SAB) was asked by EPA to review and provide recommendations concerning the development program and the selected methods. Overall, the SAB found that the experimental approach taken reasonably represented an actual landfill. The SAB did, however, question the statistical methodology used to evaluate the Phase I data and recommended that the data be re-evaluated using additional statistical analyses. Their primary concerns were the need to provide more resolution in the data through the use of more powerful statistical tests, the need to indicate the direction of the statistical differences (i.e., were individual laboratory tests generally more or less aggressive than lysimeter targets) and the need to examine the data for possible compound or class-related trends.

5. Results of Phase II

The SAB comments resulted in the application of a number of additional statistical tests to both the Phase I and Phase II data, and the Phases I and II combined data (Ref. 7 and 25). Before describing the results of these statistical analyses, it is important to bear in mind that no single leaching procedure will be able to accurately predict leachate concentrations for all compounds in all waste matrices. The idea was to select the procedure which most consistently modeled the field lysimeters. Another consideration was the need to minimize the occurrence of false negative results (i.e., the situation where the leaching test falsely identifies the waste as non-hazardous in this case the leaching test would be less aggressive than field results). While it is important to also minimize the occurrence of false positives, EPA believes that minimizing false negatives is more important, since the consequences of false negative results are more environmentally serious. In addition, other factors, such as ease and expense of operation, applicability to both organics and inorganics, reproducibility, and applicability to biological testing (the original objectives in developing the TCLP), were also considered in selecting the most appropriate leaching medium.

Table D–1 summarizes the results of four of the more important statistical analyses applied to the data comparing

lysimeter to laboratory results. This table presents comparisons between three extraction media (i.e., acetate buffer, carbonic acid and EP leaching medium), and includes the results for both organics and inorganics from both phases of testing. Only statistically significant results are presented. A different letter indicates statistical significance at the 5 percent level, an "A" value being closest to the lysimeter results. The results reported in this table come from several references (Ref. 6, 7, and 25). Also, see the TCLP Background Document (Ref. 33).

TABLE D–1.—SUMMARY TABLE—STATISTICAL ANALYSIS OF THE DATA USED TO DEVELOP THE TOXICITY CHARACTERISTIC LEACHING PROCEDURE STATISTICAL SIGNIFICANCE ONLY [1]

	Inorganics			Organics			Inorganics and organics		
	Phase I	Phase II	Phase I+II	Phase I	Phase II	Phase I+II	Phase I	Phase II	Phase I+II
Absolute percent D [2]:									
Acetate	B	A	A	A	A	A	A	A	A
Carbonic	A	A	A	A	A	A	A	A	A
EP	B	A	A	A	A	A	A	A	A
Actual percent D [3]:									
Acetate	−B	−AB	−B	+A	+A	+A	−A	+A	−A
Carbonic	−A	+B	+A	+A	+A	+AB	−A	+B	+B
EP	−AB	−A	−B	+A	+A	+B	−A	+A	+AB
Multivariate [4]:									
Acetate							A	A	A
Carbonic							A	B	B
EP							B	B	B
Precision (C.V.) [5]:									
Acetate	A	A	A	D	B	B	B	B	B
Carbonic	A	B	B	B	C	C	A	C	C
EP	ND	B	B	ND	C	C	ND	B	B

[1] A different letter indicates statistical significance at the 5% level, an "A" value being closest to the lysimeter target values.
[2] Absolute value of the percentage difference between laboratory concentration and the lysimeter field results.
[3] Actual value of the percentage difference between laboratory concentration and the lysimeter field results. A negative value indicates the laboratory concentrations to be higher than lysimeter field results.
[4] Ranks based on the Mahalanobis distance (See Ref. 7).
[5] Precision, as coefficient of variation categorized as follows: A=0–19, B=20–39, C=40–59, D=60+, ND=Not Duplicated.

The first test, the absolute percent difference, give a crude indication of accuracy of each of the methods. Looking at Table D–1, the most apparent conclusion is that there is essentially no significant differences among the leaching media as to their ability to duplicate field results. This is especially true for organic compounds. A better means of indicating significant differences in accuracy is believed to be the multivariate analysis, the results of which are also presented. This test indicates that the acetate buffer extraction is significantly more accurate than the other media. In carrying out the multivariate analysis, the results for organics and inorganics were not examined spearately.

The actual percent difference, while also giving an estimate of accuracy, can be used to estimate the aggressiveness of the leaching media relative to the field results. A negative value indicates that the extraction is more aggressive than the lysimeter field model. Looking at Table D–1, once again there are few significant differences among the leaching media as to their ability to extract organic compounds. All the values for the organics comparisons are positive values, indicating that the laboratory tests are generally less aggressive than the lysimeter model. This is most probably a function of the wastes being extracted in a device which does not prevent loss of volatiles (i.e., losses of volatile organics to the headspace in the extraction vessel), and also a function of the fact that the field leachates were analyzed unfiltered, whereas the laboratory extracts were analyzed filtered. Higher concentrations of some organic compounds, especially polyaromatic hydocarbons, were observed in the unfiltered extracts.

For inorganics, the actual percent differences test did produce some negative values, indicating that some of the leaching media tested were more aggressive towards inorganics than the lysimeter field model. In Phase I, this was true for all three leaching media. In Phase II, however, this was only true for the acetate buffer and EP leaching media. Hence, in Phase II, the carbonic acid leaching media was generally less aggressive towards inorganics than the lysimeter field model (Refs. 7 and 25).

Although the Phase I data indicated that the carbonic acid leaching medium most closely approximated the lysimeter results (Ref. 6), when the Phase II data were taken into account, the sodium acetate buffer leaching medium seemed to be the most appropriate (Refs. 7 and 25). Given the most weight in this evaluation was the multivariate analysis.

The analysis of precision, the last statistical analysis presented in Table D–1, also indicated that the acetate buffer extraction would provide a more precise test procedure than either of the other two media. In addition, the acetate buffer system offers a number of operational advantages over either the carbonic acid medium or the EP leaching medium. Finally, use of the acetate buffer system should minimize the occurrence of false negative results, since the Phase II inorganics analyses indicated that the carbonic acid medium was less aggressive than the lysimeter field results.

For the above reasons, the sodium acetate buffer system has been selected as the medium of choice. Perhaps the only objective that may have been compromised by selection of the acetate buffer system was the objective to have a leaching medium that is applicable to biological testing. Although the acetate buffer system will complicate biological testing, it should not preclude bioassay evaluation of TCLP extracts entirely.

Phase III of the TCLP development program involves an evaluation of ruggedness and precision as well as a multi-laboratory collaborative study. Since the design of these studies, and hence the results are a function of how EPA addressed some of the operational aspects of the EP, a discussion of Phase III follows the next section which presents and discusses some of these procedural problems.

6. Operational Aspects

As indicated previously, in moving from the EP to the TCLP protocol, the Agency hoped to improve the test procedure and eliminate some steps in the EP procedure which have caused difficulty for analysts. These include the need for continual pH adjustment, which is time consuming and serves as a source of imprecision, and the difficulty in performing the initial and final liquid/solid separations, which currently involves 0.45 μm pressure filtration. In addition, the need to adequately prevent volatilization of organic compounds during extraction was critical. These three aspects of the test procedure are discussed below. As an aid, Table D–2 presents a comparison between the EP and the TCLP, in terms of procedural aspects. Figures D–1 and D–2 present the flow diagrams for each procedure, respectively.

TABLE D–2.—COMPARISON OF THE EXTRACTION PROCEDURE (EP) AND THE TOXICITY CHARACTERISTIC LEACHING PROCEDURE (TCLP) [1]

Item	EP	TCLP
(1) Leaching media.	0.5 N Acetic acid added to distilled deionized water to a pH of 5 with 400 ml maximum addition. Continual pH adjustment.	0.1 pH 2.9 acetic acid solution for moderate to high alkaline wastes and 0.1 pH 4.9 acetate buffer for other wastes.
(2) Liquid/solid separation.	0.45 um Filtration to 75 psi in 10 psi increments. Unspecified filter type.	0.6–0.8 um Glass fiber filter filtration to 50 psi.
(3) Monolithic material/ particle size reduction.	Use of Structural Integrity Procedure or grinding and milling.	Grinding or milling only. Structural Integrity Procedure not used.
(4) Extraction vessels.	Unspecified design. Blade/ stirrer vessel acceptable.	Zero-headspace vessel required for volatiles. Bottles used for non-volatiles. Blade stirrer vessel not used.
(5) Agitation	Prose definition of acceptable agitation.	Rotary agitation only in an end-over-end fashion at 30±2 rpm.
(6) Extraction time.	24 hours	18 hours.
(7) Quality control requirements.	Standard additions required. One blank per sample batch.	Standard additions required in some cases. One blank per 10 extractions and every new batch of extract. Analysis specific to analyte.

[1] All other attributes between the two tests are generally the same, although there are some minor differences. Note also that while the EP only addresses those species for which National Interim Primary Drinking Water Standards (NIPDWS) exist, the TCLP can be applied to other toxicants.

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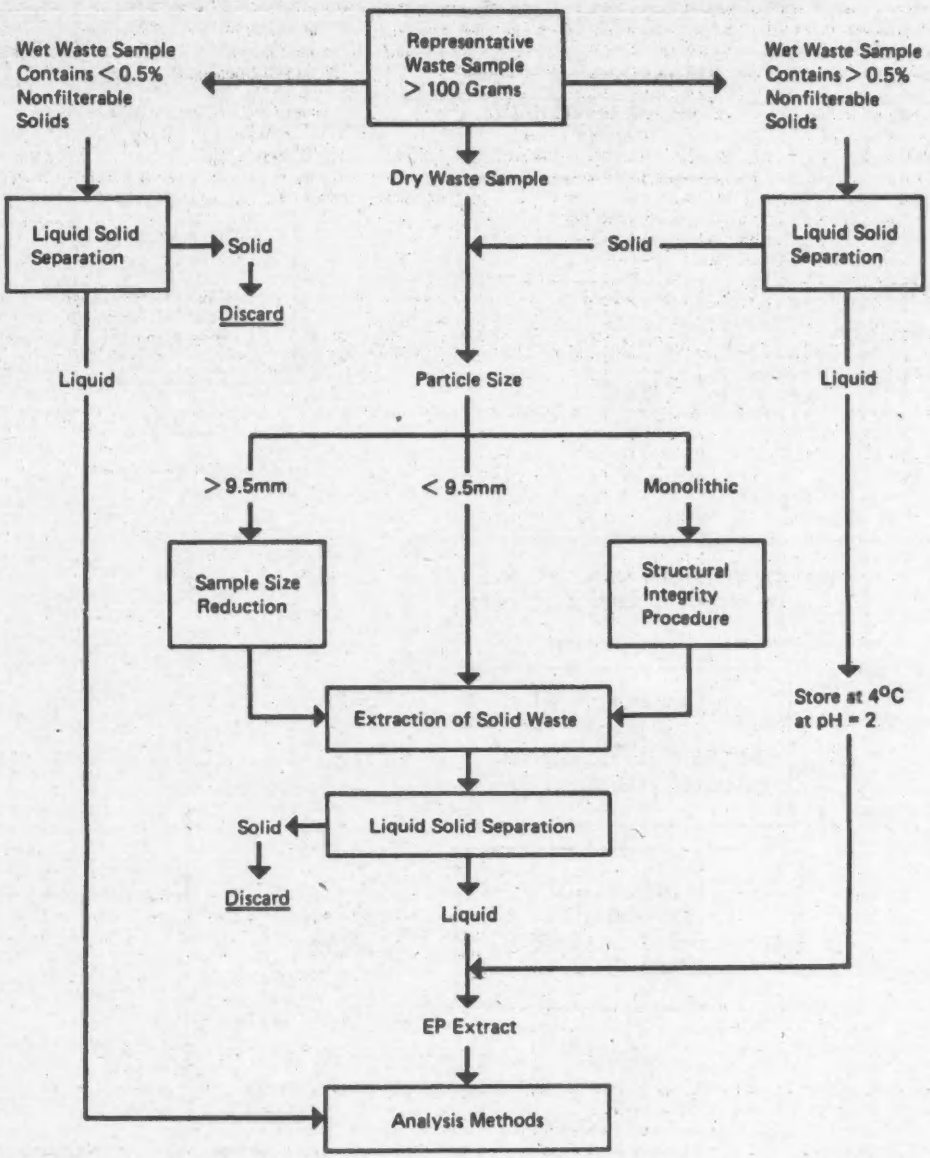
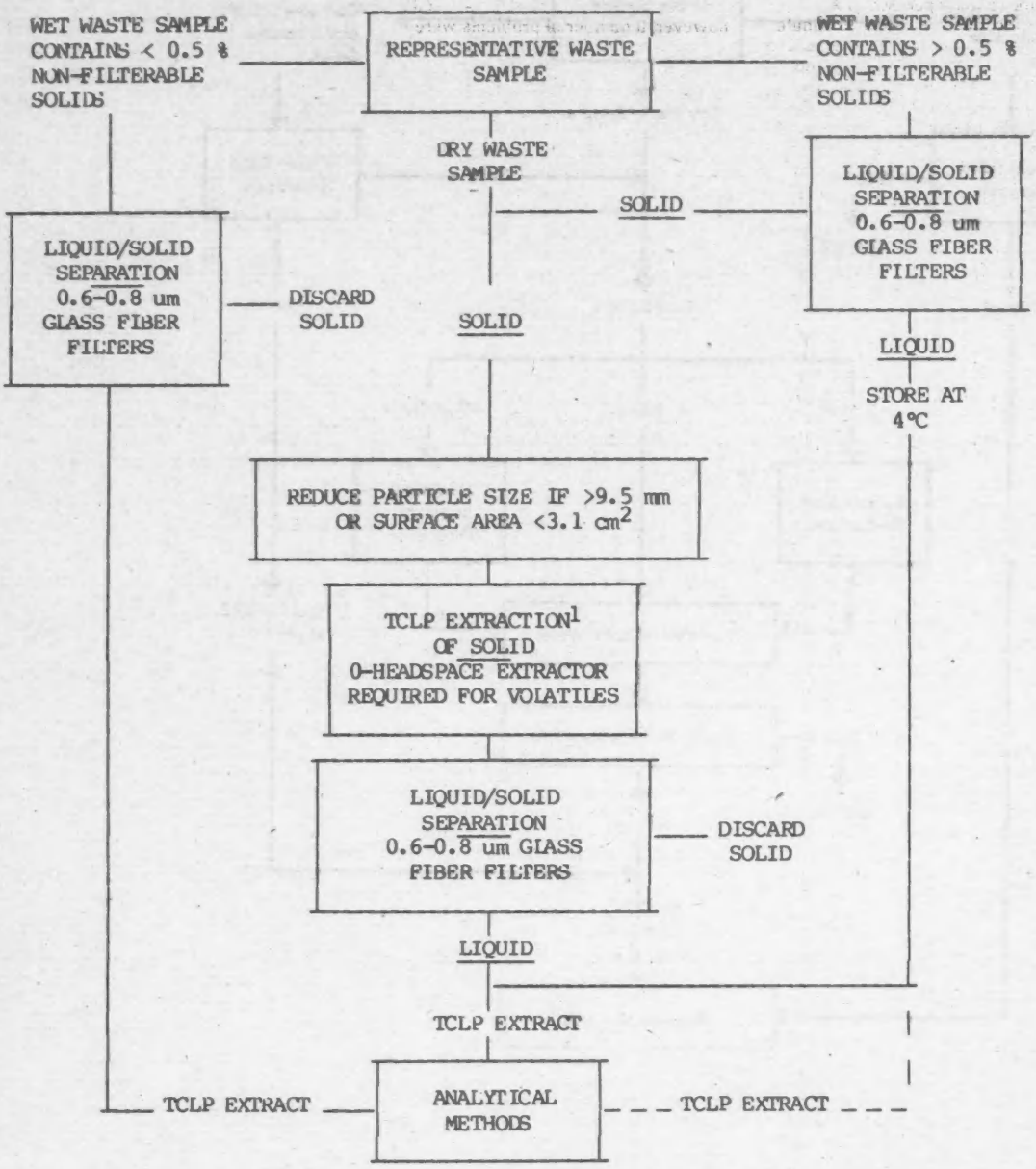


Figure D-2: Extraction Procedure Flowchart

FIGURE D-2: TCLP Flowchart



1 The extraction fluid employed is a function of the alkalinity of the solid phase of the waste.

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The EP procedure involves continual pH adjustment or titration. The procedure calls for periodic pH adjustments if necessary, at 15 minute intervals for up to 6 hours or more. This is very tedious, time consuming and expensive, and is also probably the single most important element in the EP protocol contributing to variability. Using pre-defined leaching media eliminates the problem of pH adjustment since such media does not require pH adjustment during extraction.

The initial liquid/solid separation problems are due to the tendency for some materials, such as certain types of oily wastes, to clog the 0.45 um filter, and prevent filtration even if considerable pressure (75 psi) is applied. This problem is serious, since materials which do not pass the 0.45 um filter are treated as solids even if they physically appear to be a liquid. These (liquid) wastes are then carried through EP extraction as a solid.

This is particularly serious for oily wastes, since oils have been known to frequently migrate to ground waters. It is important for the luquid/solid separation to treat, as liquids, those materials which can behave as liquids in the environment. It is important to recognize, however, that some materials, such as many paint wastes and some oily wastes, while they have some liquid properties, they will generally behave as solids in the environment (i.e., will not migrate in total).

In addition, since different analysts may expend varying degrees of effort in accomplishing the liquid/solid separation with these waste types, this problem also contributes to variability. As indicated below, EPA believes that the liquid/solid separation technique that has been developed for the TCLP protocol reduces the variability that was associated with the EP's liquid/solid separation technique, and that it also provides a more adequate differentiation between those materials that behave as liquids in the environment, and those materials which behave as solids.

Initially, it was felt that this problem could be addressed through use of the much simplier liquid/solid separation technique used in RCRA Test Method 9095 (Paint Filter Free Liquid Test) (Ref. 27). This method involves gravity filtration through a 60 mesh paint filter. This test method was promulgated on April 30, 1985 (50 FR 18370). It is intended to be a qualitative determination of whether a waste contains any free liquids, and was developed in response to bans instituted on the disposal of liquids in landfills.

In applying this method to the TCLP, however, a number of problems were encountered (Ref. 3). The most serious of these was the fact that particulates, which are solids, are capable of passing through the paint filter in bulk. Using Method 9095 in the TCLP, would lead to these solids being considered as a liquid, and thus, not subject to extraction. This could lead to an artificially high (or low) apparent extract concentration. In addition, the amount of liquid the method yields varies with how the waste is poured or placed in the filter. These two problems negated the use of Method 9095 in the TCLP.

To overcome the problems encountered with the paint filter method, EPA has returned to the use of pressure filtration to separate the liquid from the solid phase of a waste. In reevaluating this technique, however, several changes have been made which will decrease the time it takes to accomplish separation, improve the precision of the method, and provide a more adequate differentiation between those materials which behave as liquids in the environment, and those which behave as solids. These changes include switching from a 0.45 um filter medium of varying composition, to specifying a 0.6–0.8 um glass fiber filter, as well as limiting the time spent filtering. The use of glass fiber will reduce the possibility of adsorption of analytes to the filter media. Also, these filters have a much higher throughput and show much less tendency to clog, and for these reasons, allow the use of a pressure of 50 psi rather than 75 psi to accomplish separation. Initial experiments indicate substantial operational advantages and time savings with the use of glass fiber filters (Ref. 4).

The third problem deals with the need to prevent loss of volatile organic compounds during the conduct of the procedure. This includes losses during initial and final liquid/solid separation, extraction, and sample handling. With the assistance of laboratory equipment manufacturers, EPA has addressed this problem through development of a Zero-Headspace Extractor (ZHE). After experimentation with several prototype devices, the device described schematically in Figure D–3 has been successfully applied during evaluation of the TCLP procedure. Equipment of this type is now available from two suppliers (See TCLP in the proposed Appendix II to Part 261).

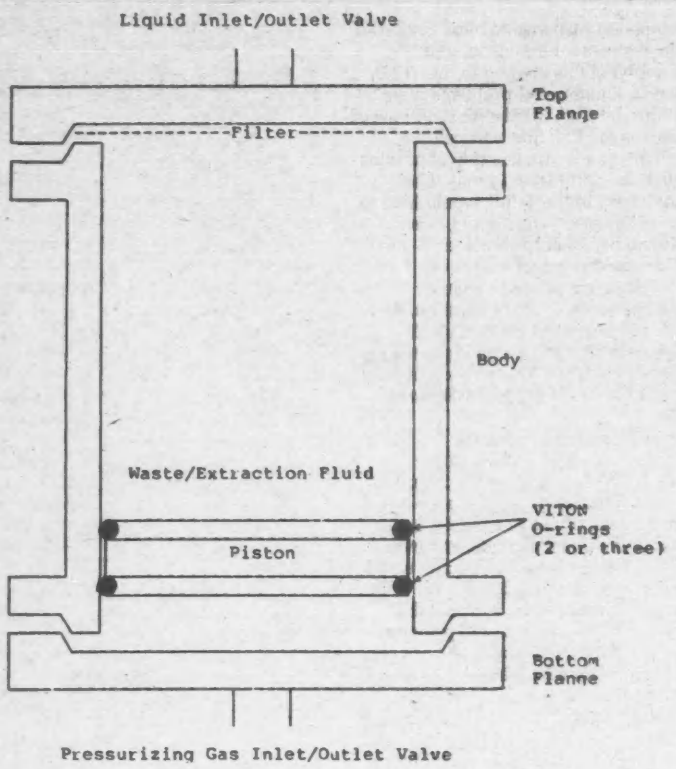

Figure D-3: Zero-Headspace Extraction Vessel

The ZHE is capable of conducting the initial liquid/solid separation, agitation, as well as final extract filtration, with only minimal loss of volatiles. Although considerably more expensive than the bottles used in the current EP, these devices are only required when investigating the leachability of volatile components. Less expensive vessels are used for assessing the mobility of non-volatile components. In addition, since the ZHE is capable of also conducting the liquid/solid separation, no additional filtration apparatus is required.

Due to the need to have the ZHE compatible with common laboratory equipment, such as off-gassing ovens, and laboratory sinks, and also the need to produce a device that is easily handled by laboratory personnel, a device smaller than the 2 liter internal volume device EPA originally had in mind was necessary. Balancing the need to also accommodate as large a sample size as possible, EPA determined that a device with one-half liter (500 ml) internal volume would be more appropriate. Due to the 500 ml internal capacity, the ZHE can only accommodate a maximum sample size of 25 grams for a 100 percent solids sample. For a waste of less than 100 percent solids, the maximum sample size the ZHE can accommodate is tied to the percent solids of the waste. The device can only accommodate the minimal 100 gram sample size specified for bottle extractions for wastes that are 25 percent solids or less.

In addition to the major improvements discussed above, EPA has instituted a number of minor improvements in the TCLP protocol. These improvements are primarily designed to increase the overall precision of the method. For example, in transferring samples from container to filtration apparatus to extractor, etc., the procedure calls for determining the weight of any residual sample material left behind and subtracting this from the total sample size. this will insure that the amount of extracting medium added to the extractor is truly a function of the solid material within the extractor, and will help to improve overall precision.

7. Results of Phase III

Phase III of the TCLP development program involved an evaluation of ruggedness and precision as well as a multilaboratory collaborative study. The experimental design and a summary of the results of the precision evaluations are presented below. While the ruggedness evaluation for the metals and semivolatiles have been completed the work on the volatiles portion of the method is in progress. The results of the ruggedness evaluation for the volatiles will be noticed for comment upon completion.

EPA's collaborative study is currently on-going. In addition, the Electric Power Research Institute (EPRI) has conducted a limited collaborative evaluation of the draft TCLP protocol, primarily as it appies to inorganic constituents. The report on this study is being drafted. The results of both of these studies will be noticed for comment when completed.

a. Precision evaluation. As discussed earlier, the TCLP protocol requires the use of a Zero-Headspace Extractor (ZHE) when dealing with volatiles, and the use of common EP extraction equipmenmt (i.e., bottles) when dealing with non-volatile components. In response, EPA has conducted a precision evaluation of the TCLP protocol using both devices. These evaluations were conducted by two laboratories, each laboratory conducting a number of replicate extractions on two wastes. These wastes were an API separator sludge/electroplating waste admixture containing nonvolatile organics and a variety of inorganics, and an ammonia still lime sludge containing a variety of polycyclic aromatic hydrocarbons, and several inorganic compounds. These wastes were also spiked with several volatile compounds.

The results of the precision evaluation for non-volatile components indicate the TCLP to be of acceptable precision (Ref. 23). For the most part, the percent coefficient of variation between replicate extractions for individual constituents was less than 30 percent. This includes the variability contributed by sampling variability and analytical variability. Although sampling

variability was minimized to the extent possible, it is reasonable to expect a sample variability contribution to the total variability of between 2 and 5 percent. Analytical variability was in many cases comparable to, and in some cases exceeded, the total variability. This observation is significant as the analytical methods used to analyze the TCLP extracts are well accepted and in widespread use.

Precision for the non-volatiles was observed to be best for those contaminants present at relatively high levels, as is the usual case in any analysis for method precision. For those cases where the contaminant was present at relatively low concentrations, precision was pair, the percent coefficient of variation generally falling below 50 and 60 percent.

The results of the precision evaluations for the volatile components (Ref. 9) are not as clearly interpreted. There are several reasons for this. These evaluations were initiated as the zero-headspace extractor became available. Recall that the present design for the ZHE was the result of experimentation with several prototype devices. Hence, experience with the ZHE, especially by laboratory technicians who were responsible for conducting the work was limited.

In addition, the precision work on the volatiles was conducted using two draft TCLP protocols. The first public draft protocol was released for comment in April of 1985. At this time EPA was still experimenting with several prototype devices, and although the April TCLP draft addressed volatile components, it was largely to obtain technical comments and suggestions and was not based on an actual working ZHE device. It was this protocol under which the TCLP precision evaluation of the volatiles was begun.

The second public draft of the TCLP protocol was released for comment in October of 1985. Although this draft was based on the current design for the ZHE, further experience with the device has led EPA to re-write the TCLP volatiles procedure in the form that it currently appears (see TCLP in the proposed Appendix II to Part 261). In addition, it is possible that further clarifications in the procedure may be advisable.

The remainder of the precision evaluation for the volatiles was conducted using the October, 1985 draft TCLP. Several significant changes have been made in the current (proposed) version due to experience gained with the device. For example, whereas the October 1985 version allowed the use of VOA vials for the collection of the TCLP extract, the proposed method requires the use of air-tight syringes or TEDLAR® bags due to expected losses of volatiles from the VOA vials during collection of the extract. VOA vials were used to collect the extract during the precision evaluation of the volatiles.

Also, in following the protocols, inadvertent errors were apparently made which seem to have affected method precision. For example, whereas the October 1985 version of the protocol placed a maximum of 25 grams on the amount of solid material the ZHE could accommodate, considerably more solid material was extracted during the precision analysis of one of the wastes tested (i.e., the API separator sludge/electroplating waste admixture). This provided for a variable liquid to solid ratio rather than the specified 20 to 1 ratio.

To complicate matters further, due to extenuating circumstances, two individual laboratories conducted the work rather than the intended single laboratory. It is apparent that higher concentrations were obtained on the same waste from the different laboratories.

As indicated above, these factors make the precision data difficult to interpret. Whereas the percent coefficient of variations on the ammonia still lime sludge were mostly less than 60 or 70 percent, which is fair given the nature of volatiles, the numbers generated from the admixture of API separator sludge and electroplating waste indicated more variability. As indicated in the draft report (Ref. 9), some of this can be attributed to severe laboratory contamination problems, and the oily character of the waste, which seemed to have dominated the extraction.

Due to the inconclusive nature of the results, EPA is in the process of conducting another precision evaluation of the volatile components. This study will use the proposal draft of the TCLP, which we believe should help to clear up some of the problems encountered during the first evaluation. This study will be similar to the previous one in most other aspects, except that a third waste will be evaluated (one expected to not react with the spiked volatiles), and two levels of volatile spike will be used (i.e., one of relatively high concentration and one of relatively low concentration). The results of this evaluation will be noticed for comment upon its completion.

b. Ruggedness evaluation. A ruggedness evaluation is designed to determine how sensitive a test method is with respect to modest departures from the protocol which can be expected during routine applications of the protocol. The purpose of this evaluation is to identify procedural variables which must be carefully controlled, and then to emphasize in the protocol the limits of acceptable deviation with respect to these variables. If a procedure is "rugged" it will be unaffected by minor departures from the specified method values. If results are affected by variation of conditions, the protocol must be written to specify those parameters which must not be varied beyond a determined amount.

As with the precision evaluation, ruggedness was evaluated for both the ZHE and common EP extractor bottles. Different lots of the same wastes used for the precision evaluations were used for the ruggedness evaluation. These evaluations were performed by one laboratory. Whereas the ruggedness evaluation for the common EP extractor bottles has been completed (Ref. 4a), the ZHE evaluation is still in progress. Table D-3 presents the parameters which were evaluated for ruggedness using both types of extraction equipment.

TABLE D-3.—PARAMETERS INVESTIGATED DURING TCLP RUGGEDNESS EVALUATION

Parameter	TCLP specification	ZHE device	Common equipment (bottles)
(1) Liquid/Solid ratio	20	19 to 21	19 to 21.
(2) Extraction time	18		16 to 20.
(3) Headspace:			
ZHE	Zero	0 to 5 percent	
Bottles	Variable		20 to 60 percent.
(4) Medium #1 acidity (milliequivalents acid).	70	60 to 80	
(5) Medium #2 acidity (milliequivalents acid).	200		190 to 210.
(6) Aliquots (taking of aliquots directly from ZHE for analysis.	Allowed for ZHE in some cases (see proposed TCLP).	Yes—No	
(7) Extractor vessel	(See proposed TCLP)	Associated ZHE—Millipore ZHE.	Borosilicate—Flint glass.
(8) Acid wash filters	Required for metals		Yes—No.
(9) Filter type	0.6-0.8 um glass fiber		Polycarbonate—Glass fiber.
(10) Pressurization of ZHE during agitation (psi).	5 to 10	0 to 20	

TABLE D–3.—PARAMETERS INVESTIGATED DURING TCLP RUGGEDNESS EVALUATION—Continued

Parameter	TCLP specification	ZHE device	Common equipment (bottles)
(11) ZHE extract collection devices	TEDLAR® bag or syringe	TEDLAR® bag—syringe	

There were several parameters which EPA intended to investigate (i.e., extraction temperature and agitation rate), which could not be accommodated due to lack of appropriate laboratory equipment necessary to vary these parameters. In addition, while EPA had originally intended to evaluate the effects of different glass fiber filters (See Table D–3, Item 9), glass fiber filters other than the type specified in the TCLP protocol were unable to withstand the pressures stipulated in the TCLP. Hence, the EP's use of polycarbonate filters were investigated instead. EPA has already determined that extract concentrations may differ slightly between the two filter types (Ref. 4 and 7). The remainder of the Table D–3 parameters are largely self-explanatory.

The ruggedness evaluation for the common (EP) extraction equipment demonstrated that for the most part, the TCLP if fairly rugged (Ref. 4a). This is especially true for the semi-volatile organics, which, with few exceptions, were unaffected by the parameters investigated. For metals, the results suggest that at least two parameters are critical. As expected, the acidity of the extracting fluid directly influences the extraction of metals. The TCLP protocol emphasizes accuracy in the preparation of the extraction fluids, by specifying the exact recipes for the preparation of these fluids, and indicating that the pH of these fluids should be accurate to within ± 0.05 pH units.

Bottle type (i.e., borosilicate vs flint glass) is the second parameter which apparently affects the concentration of metals in the extract, and may also effect (to a lesser degree), the extraction of semi-volatiles. It appears that using flint glass can result in significantly higher extract concentrations. While acid washing the flint glass bottles, or an expanded use of blanks, may help to solve the problem, specifying borosilicate over flint glass would solve the problem entirely. Due to the substantially higher cost of the borosilicate glass (from 3 to 5 times higher), EPA is reguesting comment on this option.

The volatiles evaluation for the TCLP is currently ongoing. As noted above, the Table D–3 parameters were investigated to determine if they need to be controlled more carefully. As an example, pressurization of the ZHE during agitation is being investigated to determine whether the build-up of pressure within the ZHE during agitation (which is expected to occur for some wastes, particularly carbonate containing waste), needs to be controlled more carefully. The build-up of this pressure could cause the ZHE piston to move, thereby causing the presence of headspace. The ruggedness evaluation would indicate if this variable should be controlled more carefully, perhaps by putting more pressure (e.g., 20 psi) behind the piston during agitation.

As indicated above, the results of the volatiles ruggedness evaluation will be noticed for comment upon completion.

c. *Collaborative study.* As indicated earlier, both EPA and Electric Power Research Institute (EPRI) have planned collaborative evaluations of the TCLP protocol. EPA's evaluation, in which the American Society of Testing and Materials, a number of business associations and individual companies, the Department of Energy, and Environment Canada's Environmental Research Center are participating, is currently ongoing. This study involves 26 laboratories, five different wastes, both types of extraction equipment, and organic and inorganic compounds, including volatiles.

EPRI's study, which is very similar to an evaluation EPRI conducted on the EP (Ref. 2), was limited to the determination of inorganic compounds and deals with common extraction equipment only. This study deals with seven types of utility wastes and involves three laboratories. In addition to total precision, EPRI is investigating the contribution of both variability in sampling, and variability introduced through analytical methods, as was done during the investigation of the EP protocal.

Both studies will be noticed for comment when completed.

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List of Subjects in 40 CFR Parts 261, 271, and 302

Administrative practice and procedure, Air pollution control, Chemicals, Confidential business information, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Indian lands, Intergovernmental relations, Natural resources, Nuclear materials, Penalties, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply, Waste treatment and disposal.

Dated: May 31, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. § 261.24 is revised to read as follows:

§ 261.24 Toxicity characteristic.

(a) A solid waste exhibits the characteristic of toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Appendix II, is considered to be the extract for the purpose of this section.

(b) A solid waste that exhibits the characteristic of toxicity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1.—TOXICITY CHARACTERISTIC CONTAMINANTS AND REGULATORY LEVELS

HWNO and contaminant	CASNO	Regulatory level (mg/l)
D018—Acrylonitrile	107-13-1	5.0
D004—Arsenic	7440-38-2	5.0
D005—Barium	7440-39-3	100
D019—Benzene	71-43-2	0.07
D020—Bis(2-chloroethyl) ether	111-44-4	0.05
D006—Cadmium	7440-43-9	1.0
D021—Carbon disulfide	75-15-0	14.4
D022—Carbon tetrachloride	56-23-5	0.07
D023—Chlordane	57-74-9	0.03
D024—Chlorobenzene	108-90-7	1.4
D025—Chloroform	67-66-3	0.07
D007—Chromium	1333-82-0	5.0
D026—o-Cresol [1]	95-48-7	10.0
D027—m-Cresol [1]	108-39-4	10.0
D028—p-Cresol [1]	106-44-5	10.0
D016—2,4-D	94-75-7	1.4
D029—1,2-Dichlorobenzene	95-50-1	4.3
D030—1,4-Dichlorobenzene	106-46-7	10.8
D031—1,2-Dichloroethane	107-06-2	0.40
D032—1,1-Dichloroethylene	75-35-4	0.1
D033—2,4-Dinitrotoluene	121-14-2	0.13
D012—Endrin	72-20-8	0.003
D034—Heptachlor (and its hydroxide)	76-44-8	0.001
D035—Hexachlorobenzene	118-74-1	0.13
D036—Hexachlorobutadiene	87-68-3	0.72
D037—Hexachloroethane	67-72-1	4.3
D038—Isobutanol	78-83-1	36
D008—Lead	7439-92-1	5.0
D013—Lindane	58-89-9	0.06
D009—Mercury	7439-97-6	0.2
D014—Methoxychlor	72-43-5	1.4
D039—Methylene chloride	75-09-2	8.6
D040—Methyl ethyl ketone	78-93-3	7.2
D041—Nitrobenzene	98-95-3	0.13
D042—Pentachlorophenol	87-86-5	3.6
D043—Phenol	108-95-2	14.4
D044—Pyridine	110-86-1	5.0
D010—Selenium	7782-49-2	1.0
D011—Silver	7440-22-4	5.0
D045—1,1,1,2-Tetrachloroethane	630-20-6	10.0
D046—1,1,2,2-Tetrachloroethane	79-34-5	1.3
D047—Tetrachloroethylene	127-18-4	0.1
D048—2,3,4,6-Tetrachlorophenol	58-90-2	1.5
D049—Toluene	108-88-3	14.4
D015—Toxaphene	8001-35-2	0.07
D050—1,1,1-Trichloroethane	71-55-6	30
D051—1,1,2-Trichloroethane	79-00-5	1.2
D052—Trichloroethylene	79-01-6	0.07
D053—2,4,5-Trichlorophenol	95-95-4	5.8
D054—2,4,6-Trichlorophenol	88-06-2	0.30
D017—2,4,5-TP (Silvex)	93-76-5	0.14
D055—Vinyl chloride	75-01-4	0.05

[1] o-, m-, and p-Cresol concentrations are added together and compared to a threshold of 10.0 mg/l.

3. Appendix II of Part 261 is revised to read as follows:

Appendix II—Toxicity Characteristic Leaching Procedure (TCLP)

1.0 *Scope and application.*

1.1 The TCLP is designed to determine the mobility of both organic and inorganic contaminants present in liquid, solid, and multiphasic wastes.

1.2 If a total analysis of the waste demonstrates that individual contaminants are not present in the waste, or that they are present, but at such low concentrations that the appropriate regulatory thresholds could not possibly be exceeded, the TCLP need not be run.

2.0 *Summary of method* (See Figure 1).

2.1 For wastes containing less than 0.5% solids, the waste, after filtration through a 0.6–0.8 μm glass fiber filter, is defined as the TCLP extract.

2.2 For wastes containing greater than 0.5% solids, the liquid phase, if any, is separated from the solid phase and stored for later analysis. The particle size of the solid phase is reduced (if necessary), weighed, and extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The extraction fluid employed is a function of the alkalinity of the solid phase of the waste. A special extractor vessel is used when testing for volatiles (See Table 1). Following extraction, the liquid extract is separated from the solid phase by 0.6–0.8 μm glass fiber filter filtration.

2.3 If compatible (e.g. precipitate or multiple phases will not form on combination), the initial liquid phase of the waste is added to the liquid extract and these liquids are analyzed together. If incompatible, the liquids are analyzed separately and the

results are mathematically combined to yield volume weighted average concentration.

3.0 *Interferences.*

3.1 Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 *Apparatus and materials.*

4.1 Agitation Apparatus: An acceptable agitation apparatus is one which is capable of rotating the extraction vessel in an end-over-end fashion (See Figure 2) at 30±2 rpm. Suitable devices known to EPA are identified in Table 2.

4.2 Extraction vessel:

4.2.1 Zero-Headspace Extraction Vessel (ZHE). When the waste is a being tested for mobility of any volatile contaminants (See Table 1), an extraction vessel which allows for liquid/solid separation within the device, and which effectively precludes headspace (as depicted in Figure 3), is used. This type of vessel allows for initial liquid/solid separation, extraction, and final extract filtration without having to open the vessel (See Section 4.3.1). These vessels shall have an internal volume of 500 to 600 ml and be equipped to accommodate a 90 mm filter. Suitable ZHE devices known to EPA are identified in Table 3. These devices contain viton O-rings which should be replaced frequently.

4.2.2 When the waste is being evaluated for other than volatile contaminants, an extraction vessel which does not preclude headspace (e.g., 2-liter bottle) is used. Suitable extraction vessels include bottles made from various materials, depending on the contaminants to be analyzed and the nature of the waste (See Section 4.3.3). These bottles are available from a number of laboratory suppliers. When this type of extraction vessel is used, the filtration device discussed in Section 4.3.2 is used for initial liquid-solid separation and final extract filtration.

4.3 Filtration devices:

4.3.1 Zero-Headspace Extractor Vessel (See Figure 3): When the waste is being evaluated for volatiles, the zero-headspace extraction vessel is used for filtration. The device shall be capable of supporting and keeping in place the glass fiber filter, and be able to withstand the pressure needed to accomplish separation (50 psi).

Note. When it is suspected that the glass fiber filter has been ruptured, an in-line glass fiber filter may be used to filter the extract.

4.3.2 Filter Holder. When the waste is being evaluated for other than volatile compounds, a filter holder capable of supporting a glass fiber filter and able to withstand the pressure needed to accomplish separation is used. Suitable filter holders range from simple vacuum units to relatively complex systems capable of exerting pressure up to 50 psi and more. The type of filter holder used depends on the properties of the material to be filtered (See Section 4.3.3). These devices shall have a minimum internal volume of 300 ml and be equipped to accommodate a minimum filter size of 47 mm. Filter holders known to EPA to be suitable for use are shown in Table 4.

4.3.3 Materials of Construction: Extraction vessels and filtration devices shall be made of inert materials which will not leach or absorb waste components. Glass, polytetrafluoroethylene (PTFE), or type 316 stainless steel equipment may be used when evaluating the mobility of both organic and inorganic components. Devices made of high density polyethylene (HDPE), polypropylene, or polyvinyl chloride may be used when evaluating the mobility of metals.

4.4 Filters: Filters shall be made of borosilicate glass fiber, contain no binder materials, and have an effective pore size of 0.6–0.8 um, or equivalent. Filters known to EPA to meet these specifications are identified in Table 5. Pre-filters must not be used. When evaluating the mobility of metals, filters shall be acid washed prior to use by rinsing with 1.0 N nitric acid followed by three consecutive rinses with deionized distilled water (minimum of 500 ml per rinse). Glass fiber filters are fragile and should be handled with care.

4.5 pH Meters: Any of the commonly available pH meters are acceptable.

4.6 ZHE extract collection devices: TEDLAR® bags or glass, stainless steel or PTFE gas tight syringes are used to collect the initial liquid phase and the final extract of the waste when using the ZHE device.

4.7 ZHE extraction fluid collection devices: Any device capable of transferring the extraction fluid into the ZHE without changing the nature of the extraction fluid is acceptable (e.g., a constant displacement pump, a gas tight syringe, pressure filtration unit (See Section 4.3.2), or another ZHE device).

4.8 Laboratory balance: Any laboratory balance accurate to within ±0.01 grams may be used (all weight measurements are to be within ±0.1 grams).

5.0 *Reagents.*

5.1 Water: ASTM Type 1 deionized, carbon treated, decarbonized, filtered water (or equivalent water that is treated to remove volatile components) shall be used when evaluating wastes for volatile contaminants. Otherwise, ASTM Type 2 deionized distilled water (or equivalent) is used. These waters should be monitored periodically for impurities.

5.2 1.0 N Hydrochloric acid (HCl) made from ACS Reagent grade.

5.3 1.0 N Nitric acid (HNO_3) made from ACS Reagent grade.

5.4 1.0 N Sodium hydroxide (NaOH) made from ACS Reagent grade.

5.5 Glacial acetic acid (HOAc) made from ACS Reagent grade.

5.6 Extraction fluid:

5.6.1 Extraction fluid #1: This fluid is made by adding 5.7 ml glacial HOAc to 500 ml of the appropriate water (See Section 5.1), adding 64.3 ml of 1.0 N NaOH, and diluting to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 4.93 ± 0.05.

5.6.2 Extraction fluid #2: This fluid is made by diluting 5.7 ml glacial HOAc with ASTM Type 2 water (See Section 5.1) to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 2.88 ± 0.05.

Note.—These extraction fluids shall be made up fresh daily. The pH should be checked prior to use to insure that they are made up accurately, and these fluids should be monitored frequently for impurities.

5.7 Analytical standards shall be prepared according to the appropriate analytical method.

6.0 *Sample Collection, preservation, and handling.*

6.1 All samples shall be collected using a sampling plan that addresses the consideration discussed in "Test Methods for Evaluating Solid Wastes" (SW–846).

6.2 Preservatives shall not be added to samples.

6.3 Samples can be refrigerated unless it results in irreversible physical changes to the waste.

6.4 When the waste is to be evaluated for volatile contaminants, care must be taken to insure that these are not lost. Samples shall be taken and stored in a manner which prevents the loss of volatile contaminants. If possible, any necessary particle size reduction should be conducted as the sample is being taken (See Step 8.5). Refer to SW–846 for additional sampling and storage requirements when volatiles are contaminants of concern.

6.5 TCLP extracts should be prepared for analysis and analyzed as soon as possible following extraction. If they need to be stored, even for a short period of time, storage shall be at 4°C and samples for volatiles analysis shall not be allowed to come into contact with the atmosphere (i.e., no headspace).

7.0 *Procedure when volatiles are not involved.*

Although a minimum sample size of 100 grams is required, a larger sample size may be necessary, depending on the percent solids of the waste sample. Enough waste sample should be collected such that at least 75 grams of the solid phase of the waste (as determined using glass fiber filter filtration), is extracted. This will insure that there is adequate extract for the required analyses (e.g., semivolatiles, metals, pesticides and herbicides).

The determination of which extraction fluid to use (See Step 7.12) may also be conducted at the start of this procedure. This determination shall be on the solid phase of the waste (as obtained using glass fiber filter filtration).

7.1 If the waste will obviously yield no free liquid when subjected to pressure filtration, weigh out a representative subsample of the waste (100 gram minimum) and proceed to Step 7.11.

7.2 If the sample is liquid or multiphasic, liquid/solid separation is required. This involves the filtration device discussed in Section 4.3.2, and is outlined in Steps 7.3 to 7.9.

7.3 Pre-weigh the filter and the container which will receive the filtrate.

7.4 Assemble filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure. Acid wash the filter if evaluating the mobility of metals (See Section 4.4).

7.5 Weigh out a representative subsample of the waste (100 gram minimum) and record weight.

*TEDLAR is a registered trademark of DuPont.

7.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration.

7.7 Transfer the waste sample to the filter holder.

Note.—If waste material has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 7.5, to determine the weight of the waste sample which will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2 minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2 minute interval, proceed to the next 10 psi increment. When the pressurizing gas begins to move through the filter, or when liquid flow has ceased at 50 psi (i.e., does not result in any additional filtrate within any 2 minute period), filtration is stopped.

Note.—Instantaneous application of high pressure can degrade the glass fiber filter, and may cause premature plugging.

7.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material which appears to be a liquid—but even after applying vacuum or pressure filtration, as outlined in Step 7.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid, and is carried through the extraction as a solid.

7.9 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (See Step 7.3) from the total weight of the filtrate-filled container. The liquid phase may now be either analyzed (See Step 7.15) or stored at 4°C until time of analysis. The weight of the solid phase of the waste sample is determined by subtracting the weight of the liquid phase from the weight of the total waste sample, as determined in Step 7.5 or 7.7. Record the weight of the liquid and solid phases.

Note.—If the weight of the solid phase of the waste is less than 75 grams, review Step 7.0.

7.10 The sample will be handled differently from this point, depending on whether it contains more or less than 0.5% solids. If the sample obviously has greater than 0.5% solids go to Step 7.11. If it appears that the solid may comprise less than 0.5% of the total waste, the percent solids will be determined as follows:

7.10.1 Remove the solid phase and filter from the filtration apparatus.

7.10.2 Dry the filter and solid phase at 100±20°C until two successive weighings yield the same value. Record final weight.

7.10.3 Calculate the percent solids as follows:

Weight of dry waste and filters minus tared weight of filters divided by initial weight of waste (Step 7.5 or 7.7) multiplied by 100 equals percent solids.

7.10.4 If the solid comprises less than 0.5% of the waste, the solid is discarded and the liquid phase is defined as the TCLP extract. Proceed to Step 7.14.

7.10.5 If the solid is greater than or equal to 0.5% of the waste, return to Step 7.1, and begin the procedure with a new sample of waste. Do not extract the solid that has been dried.

Note.—This step is only used to determine whether the solid must be extracted, or whether it may be discarded unextracted. It is not used in calculating the amount of extraction fluid to use in extracting the waste, nor is the dried solid derived from this step subjected to extraction. A new sample will have to be prepared for extraction.

7.11 If the sample has more than 0.5% solids, it is now evaluated for particle size. If the solid material has a surface area per gram of material equal to or greater than 3.1 cm^2, or is capable of passing through a 9.5 mm (0.375 inch) standard sieve, proceed to Step 7.12. If the surface area is smaller or the particle size is larger than that described above, the solid material is prepared for extraction by crushing, cutting, or grinding the solid material to a surface area or particle size as described above. When surface area or particle size has been appropriately altered, proceed to Step 7.12.

7.12 This step describes the determination of the appropriate extracting fluid to use (See Sections 5.0 and 7.0).

7.12.1 Weigh out a small sub-sample of the solid phase of the waste, reduce the solid (if necessary) to a particle size of approximately 1 mm in diameter or less, and transfer a 5.0 gram portion to a 500 ml beaker or erlenmeyer flask.

7.12.2 Add 96.5 ml distilled deionized water (ASTM Type 2), cover with watchglass, and stir vigorously for 5 minutes using a magnetic stirrer. Measure and record the pH. If the pH is $\leq$ 5.0, extraction fluid #1 is used. Proceed to Step 7.13.

7.12.3 If the pH from Step 7.12.2 is $>$5.0, add 3.5 ml 1.0 N HC1, slurry for 30 seconds, cover with a watchglass, heat to 50°C, and hold for 10 minutes.

7.12.4 Let the solution cool to room temperature and record pH. If pH is $<$5.0, use extraction fluid #1. If the pH is $>$5.0, extraction fluid #2 is used.

7.13 Calculate the weight of the remaining solid material by subtracting the weight of the sub-sample taken for Step 7.12, from the original amount of solid material, as obtained from Step 7.1 or 7.9. Transfer remaining solid material into the extractor vessel, including the filter used to separate the initial liquid from the solid phase.

Note.—If any of the solid phase remains adhered to the walls of the filter holder, or the container used to transfer the waste, its weight shall be determined, subtracted from the weight of the solid phase of the waste, as determined above, and this weight is used in calculating the amount of extraction fluid to add into the extractor bottle.

Slowly add an amount of the appropriate extraction fluid (See Step 7.12), into the extractor bottle equal to 20 times the weight of the solid phase that has been placed into the extractor bottle. Close extractor bottle tightly, secure in rotary extractor device and rotate at 30 ± 2 rpm for 18 hours. The temperature shall be maintained at 22 ± 3 °C during the extraction period.

Note.—As agitation continues, pressure may build up within the extractor bottle (due to the evolution of gasses such as carbon dioxide). To relieve these pressures, the extractor bottle may be periodically opened and vented into a hood.

7.14 Following the 18 hour extraction, the material in the extractor vessel is separated into its component liquid and solid phases by filtering through a new glass fiber filter as outlined in Step 7.7. This new filter shall be acid washed (See Section 4.4) if evaluating the mobility of metals.

7.15 The TCLP extract is now prepared as follows:

7.15.1 If the waste contained no initial liquid phase, the filtered liquid material obtained from Step 7.14 is defined as the TCLP extract. Proceed to Step 7.16.

7.15.2 If compatible (e.g., will not form precipitate or multiple phases), the filtered liquid resulting from Step 7.14 is combined with the initial liquid phase of the waste as obtained in Step 7.9. This combined liquid is defined as the TCLP extract. Proceed to Step 7.16.

7.15.3 If the initial liquid phase of the waste, as obtained from Step 7.9, is not or may not be compatible with the filtered liquid resulting from Step 7.14, these liquids are not combined. These liquids are collectively defined as the TCLP extract, are analyzed separately, and the results are combined mathematically. Proceed to Step 7.16.

7.16 The TCLP extract will be prepared and analyzed according to the appropriate SW-846 analytical methods identified in Appendix III of 40 CFR 261. TCLP extracts to be analyzed for metals shall be acid digested. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to 0.1 ml), conduct the appropriate analyses, and combine the results mathematically by using a simple weighted average:

$$\text{Final contaminant concentration} = \frac{(V_1)(C_1) + (V_2)(C_2)}{V_1 + V_2}$$

where:

V_1 = The volume of the first phase (l)
C_1 = The concentration of the contaminant of concern in the first phase (mg/l)
V_2 = The volume of the second phase (l)
C_2 = The concentration of the contaminant of concern in the second phase (mg/l)

7.17 The contaminant concentrations in the TCLP extract are compared to the thresholds identified in the appropriate regulations. Refer to Section 9 for quality assurance requirements.

8.0 *Procedure when volatiles are involved.*

The ZHE device has approximately a 500 ml internal capacity. Although a minimum sample size of 100 grams was required in the Section 7 procedure, the ZHE can only accommodate a maximum 100 percent solids sample of 25 grams, due to the need to add an amount of extraction fluid equal to 20 times the weight of the solid phase. Step 8.4 provides the means of which to determine the approximate sample size for the ZHE device.

Although the following procedure allows for particle size reduction during the conduct of the procedure, this could result in the loss of volatile compounds. If possible, any necessary particle size reduction (See Step 8.5) should be conducted on the sample as it is being taken. Particle size reduction should only be conducted during the procedure if there is no other choice.

In carrying out the following steps, do not allow the waste to be exposed to the atmosphere for any more time than is absolutely necessary.

8.1 Pre-weigh the (evacuated) container which will receive the filtrate (See Section 4.6), and set aside.

8.2 Place the ZHE piston within the body of the ZHE (it may be helpful to first moisten the piston O-rings slightly with extraction fluid). Secure the gas inlet/outlet flange (bottom flange) onto the ZHE body in accordance with the manufacturer's instructions. Secure the glass fiber filter between the support screens and set aside. Set liquid inlet/outlet flange (top flange) aside.

8.3 If the waste will obviously yield no free liquid when subjected to pressure filtration, weigh out a representative subsample of the waste (25 gram maximum—See Step 8.0), record weight, and proceed to Step 8.5.

8.4 This step provides the means by which to determine the approximate sample size for the ZHE device. If the waste is liquid or multiphasic, follow the procedure outlined in Steps 7.2 to 7.9 (using the Section 7 filtration apparatus), and obtain the percent solids by dividing the weight of the solid phase of the waste by the original sample size used. If the waste obviously contains greater than 0.5% solids, go to Step 8.4.2. If it appears that the solid may comprise less than 0.5% of the waste, go to Step 8.4.1.

8.4.1 Determine the percent solids by using the procedure outlined in Step 7.10. If the waste contains less than 0.5% solids, weigh out a new 100 gram minimum representative sample, proceed to Step 8.7, and follow until the liquid phase of the waste is filtered using the ZHE device (Step 8.8). This liquid filtrate is defined as the TCLP extract, and is analyzed directly. If the waste contains greater than or equal to 0.5% solids, repeat Step 8.4 using a new 100 gram minimum sample, determine the percent solids, and proceed to Step 8.4.2.

8.4.2 If the sample is $\leq$ 25% solids, weigh out a new 100 gram minimum representative sample, and proceed to Step 8.5. If the sample is $>$ 25% solids, the maximum amount of sample the ZHE can accommodate is determined by dividing 25 grams by the percent solids obtained from Step 8.4. Weigh out a new representative sample of the determined size.

8.5 After a representative sample of the waste (sample size determined from Step 8.4) has been weighed out and recorded, the sample is now evaluated for particle size (See Step 8.0). If the solid material within the waste obviously has a surface area per gram of material equal to or greater than 3.1 cm^2, or is capable of passing through a 9.5 mm (0.375 inch) standard sieve, proceed immediately to Step 8.6. If the surface area is smaller or the particle size is larger than that described above, the solid material which does not meet the above criteria is separated from the liquid phase by sieving (or equivalent means), and the solid is prepared for extraction by crushing, cutting, or grinding to a surface area or particle size as described above.

Note.—Wastes and appropriate equipment should be refrigerated, if possible, to 4°C prior to particle size reduction. Grinding and milling machinery which generates heat shall not be used for particle size reduction. If reduction of the solid phase of the waste is necessary, exposure of the waste to the atmosphere should be avoided to the extent possible.

When surface area or particle size has been appropriately altered, the solid is recombined with the rest of the waste.

8.6 Waste slurries need not be allowed to stand to permit the solid phase to settle. Wastes that settle slowly shall not be centrifuged prior to filtration.

8.7 Transfer the entire sample (liquid and solid phases) quickly to the ZHE. Secure the filter and support screens into the top flange of the device and secure the top flange to the ZHE body in accordance with the manufacturer's instructions. Tighten all ZHE fittings and place the device in the vertical position (gas inlet/outlet flange on the bottom). Do not attach the extract collection device to the top plate.

Note.—If waste material has obviously adhered to the container used to transfer the sample to the ZHE, determine the weight of this residue and subtract it from the sample weight determined in Step 8.4, to determine the weight of the waste sample which will be filtered.

Attach a gas line to the gas inlet/outlet valve (bottom flange), and with the liquid inlet/outlet valve (top flange) open, begin applying gentle pressure of 1–10 psi (or more if necessary) to slowly force all headspace out of the ZHE device. At the first appearance of liquid from the liquid inlet/outlet valve, quickly close the valve and discontinue pressure.

8.8 Attach evacuated pre-weighed filtrate collection container to the liquid inlet/outlet valve and open valve. Begin applying gentle pressure of 1–10 psi to force the liquid phase into the filtrate collection container. If no additional liquid has passed through the filter in any 2 minute interval, slowly increase the pressure in 10 psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if no additional liquid has passed through the filter in any 2 minute interval, proceed to the next 10 psi increment. When liquid flow has ceased such that continued pressure filtration at 50 psi does not result in any additional filtrate within any 2 minute period, filtration is stopped. Close the liquid inlet/outlet valve, discontinue pressure to the piston, and disconnect the filtrate collection container.

Note.—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

8.9 The material in the ZHE is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material which appears to be a liquid—but even after applying pressure filtration, this material will not filter. If this is the case, the material within the filtration device is defined as a solid, and is carried through the TCLP extraction as a solid.

If the original waste contained less than 0.5% solids, (See Step 8.4) this filtrate is defined as the TCLP extract, and is analyzed directly—proceed to Step 8.13.

8.10 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (See Step 8.1) from the total weight of the filtrate-filled container. The liquid phase may now be either analyzed (See Steps 8.13 and 8.14), or stored at 4°C until time of analysis. The weight of the solid phase of the waste sample is determined by subtracting the weight of the liquid phase from the weight of the total waste sample (See Step 8.4). Record the final weight of the liquid and solid phases.

8.11 The following details how to add the appropriate amount of extraction fluid to the solid material within the ZHE and agitation of the ZHE vessel. Extraction fluid #1 is used in all cases (See Section 5.6).

8.11.1 With the ZHE in the vertical position, attach a line from the extraction fluid reservoir to the liquid inlet/outlet valve. The line used shall contain fresh extraction fluid and should be preflushed with fluid to eliminate any air pockets in the line. Release gas pressure on the ZHE piston (from the gas inlet/outlet valve), open the liquid inlet/outlet valve, and begin transferring extraction fluid (by pumping or similar means) into the ZHE. Continue pumping extraction fluid into the ZHE until the amount of fluid introduced into the device equals 20 times the weight of the solid phase of the waste that is in the ZHE.

8.11.2 After the extraction fluid has been added, immediately close the liquid inlet/outlet valve, and disconnect the extraction fluid line. Check the ZHE to make sure that all valves are in their closed positions. Pick up the ZHE and physically rotate the device in an end-over-end fashion 2 or 3 times.

Reposition the ZHE in the vertical position with the liquid inlet/outlet valve on top. Put 5–10 psi behind the piston (if necessary), and slowly open the liquid inlet/outlet valve to bleed out any headspace (into a hood) that may have been introduced due to the addition of extraction fluid. This bleeding shall be done quickly and shall be stopped at the first appearance of liquid from the valve. Re-pressurize the ZHE with 5–10 psi and check all ZHE fittings to insure that they are closed.

8.11.3 Place the ZHE in the rotary extractor apparatus (if it is not already there), and rotate the ZHE at 30 + 2 rpm for 18 hours. The temperature shall be maintained at 22 ± + 3°C during agitation.

8.12 Following the 18 hour extraction, check the pressure behind the ZHE piston by quickly opening and closing the gas inlet/outlet valve, and noting the escape of gas. If the pressure has not been maintained (i.e., no gas release observed), the device is leaking. Replace ZHE O-rings or other fittings, as necessary, and redo the extraction with a new sample of waste. If the pressure within the device has been maintained, the material in the extractor vessel is once again separated into its component liquid and solid phases. If the waste contained an initial liquid phase, the liquid may be filtered directly into the same filtrate collection container (i.e., TEDLAR® bag, gas-tight syringe) holding the initial liquid phase of the waste, unless doing so would create multiple phases, or unless there is not enough volume left within the filtrate collection container. A separate filtrate collection container must be used in these cases. Filter through the glass fiber filter, using the ZHE device as discussed in Step 8.8. All extract shall be filtered and collected if the extract is multi-phasic or if the waste contained an initial liquid phase.

Note.—If the glass fiber filter is not intact following agitation, the filtration device discussed in the NOTE in Section 4.3.1 may be used to filter the material within the ZHE.

8.13 If the waste contained no initial liquid phase, the filtered liquid material obtained from Step 8.12 is defined as the TCLP extract. If the waste contained an initial liquid phase, the filtered liquid material obtained from Step 8.12, and the initial liquid phase (Step 8.8) are collectively defined as the TCLP extract.

8.14 The TCLP extract will be prepared and analyzed according to the appropriate SW–846 analytical methods, as identified in Appendix III of 40 CFR 261. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to 0.1 ml), conduct the appropriate analyses and combine the results mathematically by using a simple volume weighted average:

$$\text{Final contaminant concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phase (l)
C_1 = The concentration of the contaminant of concern in the first phase (mg/l)
V_2 = The volume of the second phase (l)
C_2 = The concentration of the contaminant of concern in the second phase (mg/l)

8.15 The contaminant concentrations in the TCLP extract are compared to the thresholds identified in the appropriate regulations. Refer to Section 9 for quality assurance requirements.

9.0 *Quality Assurance requirements.*

9.1 All data, including quality assurance data, should be maintained and available for reference or inspection.

9.2 A minimum of one blank for every 10 extractions that have been conducted in an extraction vessel shall be employed as a check to determine if any memory effects from the extraction equipment is occurring. One blank shall also be employed for every new batch of leaching fluid that is made up.

9.3 All quality control measures described in the appropriate analytical methods shall be followed.

9.4 The method of standard addition shall be employed for each waste type if: 1) Recovery of the compound from spiked splits of the TCLP extract is not between 50 and 150%, or 2) If the concentration of the constituent measured in the extract is within 20% of the appropriate regulatory threshold. If more than 1 extraction is being run on samples of the same waste, the method of standard addition need only be applied once and the percent recoveries applied to the remainder of the extractions.

9.5 TCLP extracts shall be analyzed within the following periods after generation: Volatiles—14 days, Semi-volatiles—40 days, Mercury—28 days, and other Metals—180 days.

TABLE 1.—VOLATILE CONTAMINANTS [1]

Compound	CASNO
Acetone	67-64-1
Acrylonitrile	107-13-1
Benzene	71-43-2
n-Butyl alcohol	71-36-6
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlorobenzene	108-90-7
Chloroform	67-66-3
1,2-Dichloroethane	107-06-2
1,1-Dichloroethylene	75-35-4
Ethyl acetate	141-78-6
Ethyl benzene	100-41-4
Ethyl ether	60-29-7
Isobutanol	78-83-1
Methanol	67-56-1
Methylene chloride	75-09-2
Methyl ethyl ketone	78-93-3
Methyl isobutyl ketone	108-10-1
1,1,1,2-Tetrachloroethane	630-20-6
1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene	127-18-4
Toluene	108-88-3
1,1,1-Trichloroethane	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Vinyl chloride	75-01-4
Xylene	1330-20-7

[1] Includes compounds identified in both the Land Disposal Restrictions Rule and the Toxicity Characteristic.

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]

Company	Location	Model
Associated Design and Manufacturing Co.	Alexandria, Virginia, (703) 549-5999.	4-vessel device. 6-vessel device.
Lars Lande Manufacturing.	Whitmore Lake, Michigan, (313) 449-4116.	10-vessel device.
IRA Machine Shop and Laboratory.	Santurce, Puerto Rico, (809) 752-4004.	16-vessel device.
EPRI Extractor		6-vessel device.[2]

[1] Any device which rotates the extraction vessel in an end-over-end fashion at 30 ± 2 rpm is acceptable.
[2] Although this device is suitable, it is not commercially made. It may also require retrofitting to accommodate ZHE devices.

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS

Company	Location	Model No.
Associated Design and Manufacturing Co.	Alexandria, Virginia, (703) 549-5999.	3740-ZHE
Millipore Corp	Bedford, Massachusetts, (800) 225-3384.	SD1P581C5

TABLE 4.—SUITABLE FILTER HOLDERS [1]

Company	Location	Model	Size (mm)
Nuclepore Corp	Pleasanton, California, (800) 882-7711.	425910 410400	142 47
Micro Filtration Systems.	Dublin, California, (415) 828-6010.	302400	142
Millipore Corp	Bedford, Massachusetts, (800) 225-3384.	YT30142HW XX1004700	142 47

[1] Any device capable of separating the liquid from the solid phase of the waste is suitable, providing that it is chemically compatible with the waste and the constituents to be analyzed. Plastic devices (not listed above) may be used when only inorganic contaminants are of concern.

TABLE 5.—SUITABLE FILTER MEDIA

Company	Location	Model	Pore size [1]
Whatman Laboratory Products, Inc.	Clifton, New Jersey (201) 773-5800.	GFF	0.7

[1] Nominal pore size.

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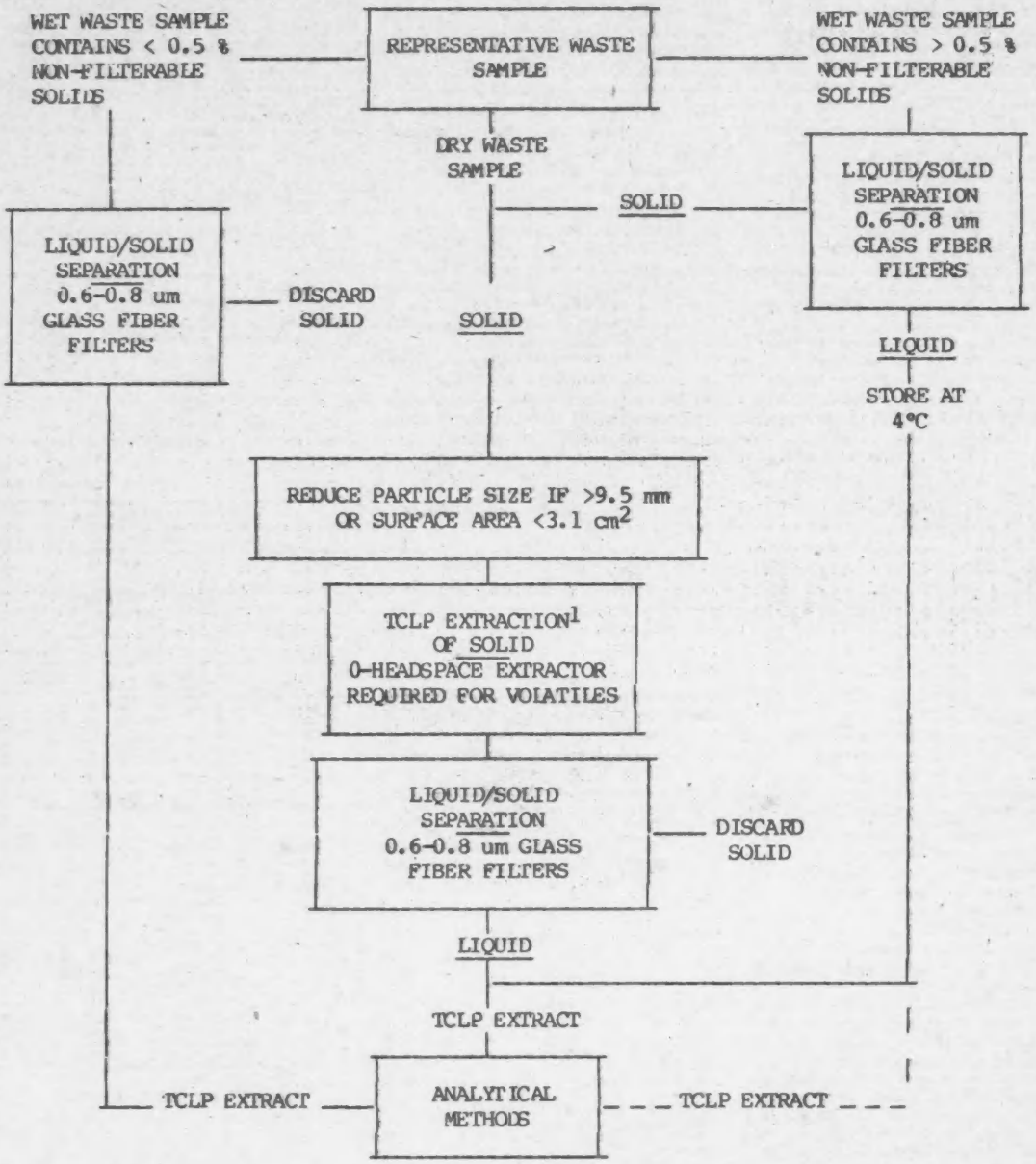
FIGURE 1: TCLP Flowchart



1 The extraction fluid employed is a function of the alkalinity of the solid phase of the waste.

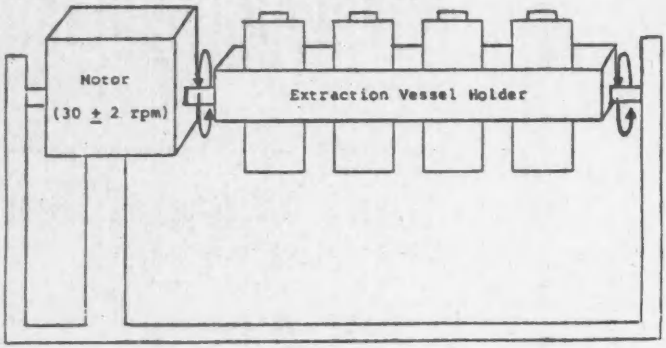


Figure 2: Rotary Agitation

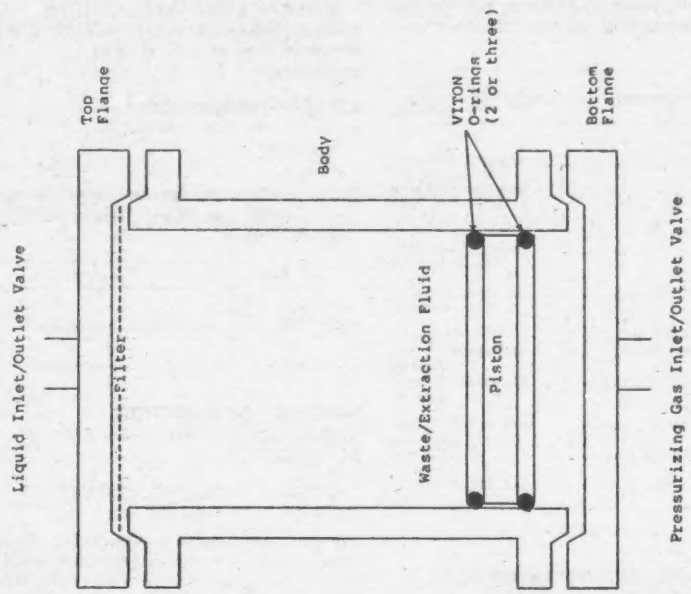


Figure 3: Zero-Headspace Extraction Vessel

4. Amend Table 1 of Appendix III of Part 261 to add the following compounds and methods in alphabetical order:

Appendix III—Chemical Analysis Test Methods

* * * * *

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846

Compound	First edition method(s)	Second edition method(s)
* * *	*	*
Benzene	8.02, 8.24	8020, 8024, 5030/8240
* * *	*	*
Bis(2-chloroethyl)ether	8.01, 8.24	8010, 8240, 3510/8270
* * *	*	*
Cresol(s)	8.04, 8.25	8040, 8250, 3510/8270
* * *	*	*
Dichlorobenzene(s)	8.01, 8.02, 8.12, 8.25	8010, 8120, 8250, 3519/8270
1,2-Dichloroethane	8.01, 8.24	8010, 8240, 5030/8240
1,1-Dichloroethylene		5030/8240
* * *	*	*
2,4-Dinitrotoluene	8.09, 8.25	8090, 8250, 3510/8270
* * *	*	*
Hexachlorobenzene	8.12, 8.25	8120, 8250, 3510/8270
Hexachlorobutadiene	8.12, 8.25	8120, 8250, 3510/8270
Hexachloroethane	8.12, 8.25	8010, 8240, 3510/8270
* * *	*	*
Isobutanol		5030/8240
* * *	*	*
Methoxychlor		8080
Methylene chloride		5030/8240
* * *	*	*
Nitrobenzene	8.09, 8.25	8090, 8250, 3510/8270

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846—Continued

Compound	First edition method(s)	Second edition method(s)
* * *	*	*
Pentachlorophenol	8.04, 8.25	8040, 8250, 3510/8270
Phenol	8.04, 8.25 8.22	8040, 8250, 8140, 3510/8270
* * *	*	*
Pyridene	8.06, 8.09, 8.25	8090, 8250, 3510/8270
* * *	*	*
Tetrachloroethane(s)	8.01, 8.24	8010, 8240, 5030/8240
* * *	*	*
Tetrachloroethylene		5030/8240
Tetrachlorophenol(s)	8.04, 8.24	8040, 8250, 3510/8270
Toluene	8.02, 8.24	8020, 8024, 5030/8240
* * *	*	*
Trichloroethane(s)	8.01, 8.24	8010, 8240, 5030/8240
Trichloroethylene		5030/8240
* * *	*	*
Trichlorophenol(s)	8.04, 8.25	8040, 8250, 3510/8270
* * *	*	*

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. Amend § 271.1 Paragraph (j) by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* * * * *	
June 13, 1986	Toxicity Characteristic.
* * * * *	

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: Sec. 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Secs. 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by revising the entry for "Characteristic of EP Toxicity" in Table 302.4 and the footnotes are republished as follow:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 3024.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
*	*	*	*				
Unlisted Hazardous Wastes			1*	4			
*	*	*	*				
Toxicity Characteristic			1*	4			
Acrylonitrile	107131	2-Propenenitrile	100	1,2,4	D018	B	100=(45.4)
Arsenic			1*	4	D004	X	1=(0.454)
Barium			1*	4	D005	C	1000(454)
Benzene	71432		1000	1,2,3,4	D019	C	1000=(454)
Bis(2-chloroethyl) ether	111444	Dichloroethyl ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,4	D020	X	1=(0.454)
Cadmium			1*	4	D006	X	1=(0.454)
Carbon disulfide	75150	Carbon bisulfide	5000	1,4	D021	D	5000=(2270)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,4	D022	D	5000=(2270)
Chlordane	57749	Chlordane, technical 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-.	1	1,2,4	D023	X	1=(0.454)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,4	D024	B	100(45.4)
Chloroform	67663	Methane, trichloro-	5000	1,2,4	D025	D	5000=(2270)
Chromium			1*	4	D007	X	1=(0.454)
o-Cresol	95487	o-Cresylic acid	1000	1,4	D026	C	1000=(454)
m-Cresol	108394	m-Cresylic acid	1000	1,4	D027	C	1000=(454)
p-Cresol	106445	p-Cresylic acid	1000	1,4	D028	C	1000=(454)
2,4-D			100	1,4	D016	B	100(45.4)
1,2-Dichlorobenzene	95501	Benzene, 1,2-dichloro-o-Dichlorobenzene	100	1,2,4	D029	B	100(45.4)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro-p-Dichlorobenzene	100	1,2,4	D030	B	100(45.4)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro-Ethylene dichloride	5000	1,2,4	D031	D	5000=(2270)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro-Vinylidene chloride	5000	1,2,4	D032	D	5000=(2270)
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,4	D033	C	1000=(454)
Endrin			1	1,4	D012	X	1(0.454)
Heptachlor (and hydroxide)	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	1	1,2,4	D034	X	1=(0.454)
Hexachlorobenzene	118741	Benzene, hexachloro	1*	2,4	D035	X	1=(0.454)
Hexachlorobutadiene	87683	1,3-Butadiene, 1,1,2,3,4,4- hexachloro-	1*	2,4	D036	X	1=(0.454)
Hexachloroethane	67721	Ethane, 1,1,1,2,2,2-hexachloro-	1*	2,4	D037	X	1=(0.454)
Isobutanol	78831	Isobutyl alcohol 1-Propanol, 2-methyl-	1*	4	D038	D	5000(2270)
Lead			1*	4	D008	X	1=(0.454)

TABLE 3024.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Lindane			1	1,4	D013	X	1≠(0.454)
Mercury			1*	4	D009	X	1(0.454)
Methoxychlor			1	1,4	D014	X	1(0.454)
Methylene chloride	75092	Methane, dichloro-	1*	2,4	D039	C	1000(454)
Methyl ethyl ketone	78933	2-Butanone	1*	4	D040	D	5000(2270)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,4	D041	C	1000(454)
Pentachlorophenol	87865	Phenol, pentachloro	10	1,2,4	D042	A	10≠(4.54)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	D043	C	1000≠≠(454)
Pyridine	110861		1*	4	D044	X	1≠≠(0.454)
Selenium			1*	4	D010	X	1≠≠(0.454)
Silver			1*	4	D011	X	1(0.454)
1,1,1,2-Tetrachloroethane	630206	Ethane, 1,1,1,2-tetrachloro	1*	4	D045	X	1≠(0.454)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,4	D046	X	1≠(0.454)
Tetrachloroethylene	127184	Ethene, 1,1,2,2-tetrachloro-	1*	2,4	D047	X	1≠(0.454)
2,3,4,6-Tetrachlorophenol	58902	Phenol, 2,3,4,6-tetrachloro-	1*	4	D048	A	10(4.54)
Toluene	108883	Benzene, methyl-	1000	1,2,4	D049	C	1000(454)
Toxaphene			1	1,4	D015	X	1≠(0.454)
1,1,1-Trichloroethane	71556	Methyl chloroform	1*	2,4	D050	C	1000(454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,4	D051	X	1≠(0.454)
Trichloroethylene	79016	Trichloroethene	1000	1,2,4	D052	C	1000≠(454)
2,4,5-Trichloro-phenol	95954	Phenol, 2,4,5-trichloro-	10	1,4	D053	A	10≠(4.54)
2,4,6-Trichloro-phenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,4	D054	A	10≠(4.54)
2,4,5-TP			100	1,4	D017	B	100(45.4)
Vinyl chloride	75014	Ethene, chloro-	1*	2,3,4	D055	X	1≠(0.454)

†—Indicates the statutory source as defined by 1,2,3, or 4 below.
1—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).
2—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).
3—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

≠—Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed.
≠≠—Indicates that an adjusted RQ is proposed in a spearate NPRM [50 FR 13154, April 4, 1985].
≠≠≠—The Agency may adjust the RQ for methyl isocyanate in a future rulemaking; until then the statutory 1-pound RQ applies.

[FR Doc. 86–13033 Filed 6–12–86; 8:45 am]
BILLING CODE 6560–50–M

federal register

Friday
June 13, 1986

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

49 CFR Part 571

[Docket No. 81-11; Notice 19]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice responds to comments on a notice of proposed rulemaking published on May 13, 1985, proposing a new standardized replaceable light source for headlamps to be known as Type HB2, and to be based upon the ECE H-4 bulb. NHTSA has decided that the comments require the issuance of a further proposal on the HB2 light source. This notice is in the form of an amendment to the earlier proposal. It also proposes additional figures to describe HB2. Only HB2 bulb and socket dimensional issues and bulb rating and performance will be covered in this notice. Other HB-2 issues will be addressed in the next rulemaking action.

The proposed bulb filament and bulb/socket fit tolerances have been modified. The ¼ degree reaim allowance in the photometric test would be prohibited for the HB2.

Other aspects of the May 1985 proposal concerning the HB2 remain unchanged.

DATES: Comments closing date for the proposal is July 14, 1986. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). Effective date of the amendment would be 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, NHTSA, Room 5109, Nassif Building, 400 Seventh St. SW, Washington, D.C. 20590 (Docket Hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC (202-426-1714).

SUPPLEMENTARY INFORMATION: On May 13, 1985, NHTSA proposed amendments to Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to allow three new types of standardized replaceable light source to be used in replaceable bulb headlamp systems on motor vehicles (50 FR 19961), to be known as HB2, HB3, and HB4. Standard No. 108 was amended on May 2, 1986 to adopt the HB3 and HB4 light sources (51 FR 16325). Final action was deferred on the HB2 light source, a variation of the European H-4 bulb, which would incorporate both upper and lower beam filaments.

In its proposal, NHTSA stated its belief that some modification to the interface between the bulb and socket was needed to distinguish between existing lamp systems that use the existing H-4 bulb and those that would use the proposed HB2 source. Such a modification would help prevent inadvertent misuse of light source and lamp assemblies which may be available and legal for motorcycle headlamp use under Standard No. 108, but which do not meet all the specifications set forth for passenger car headlamps. Concerned over the potential safety problem of excessive glare which might result from such misuse, NHTSA proposed changing the location of one mounting lug and adding a slot in the mounting ring of the bulb plus a matching slot and new lug to be located in the socket of the reflector assembly. To assure the capability of mechanical aim, NHTSA also proposed specifications for tolerance and fit between the HB2 light source and the headlamp socket which are comparable to those required since 1983 for the standardized replaceable light source. NHTSA believed that this would help reduce the errors associated with mechanical aiming that would exist if the ECE specifications, which have no socket dimensions and are not designed for mechanical aim, were adopted. NHTSA proposed no specific tolerances for the filament of the HB2 light source, but these were proposed indirectly through the general requirement that HB2 be designed to conform to applicable ECE specifications. Under the May 1985 proposal, a test voltage of 13.2 was propose, for measurement of maximum power and luminous flux. Finally, the method of locating the black cap was contained in a note in the drawings describing the HB2.

General Comments

The principal commenters on the proposed HB2 light source were lighting manufacturers: OSRAM, Hella, Thorn, GTE Sylvania, Philips Co., and General Electric Corp. Four vehicle manufacturers also commented: Volkswagen, Rolls Royce, Ford Motor Co., and General Motors. OSRAM and Philips favored a new light source which differed from the existing H-4 bulb in that reduced filament, filament-to-shield, and filament location tolerances would be specified and a new specification for socket fit would be provided. OSRAM initially argued that tighter tolerances, which it suggested, can be met and are required to assure good aim with mechanical aimers on replaceable bulb headlamps, but subsequently both OSRAM and Philips argued that tighter filament tolerances to the extent previously suggested are not necessary. GTE Sylvania, GE and Ford opposed use of the existing H-4. In support of its comment, Ford asserted that with the H-4 there was excessive vertical aim variability using mechanical aiming techniques, a deficiency in specifications, a possible reduced visibility of overhead and side-mounted signs due to the beam pattern, and a possible reduction in seeing distance when vehicles equipped with H-4 light source headlamps meet vehicles using headlamps on the current lower beam. NHTSA has considered these comments carefully in developing this supplemental notice.

Design of the base of the HB2

The issue is whether the design of the base of the HB2 should be different from the design of the base of the ECE H-4. The May 1985 notice proposed that there be a difference in order to minimize the potential misuse of high-candela bulbs that were unsuitable for passenger car headlamps. This original proposal was objected to by virtually every commenter on the grounds that it would result in increased manufacturing costs, and probably would not have the effect desired by the agency as illegal versions could be easily developed. The agency now proposes using the H-4 with an ECE P43t-38 base but with tighter fit tolerances. However, several concerns have been raised about taking this approach.

One of these concerns is misuse of existing bulbs that are mechanically interchangeable in H-4 lamp sockets, characterized by a lack of black caps, excessively high wattage, inadequate dimensional controls, etc., which could produce excessive glare for oncoming motorists. There are two types of potential misuse that can be associated with bulbs that are mechanically interchangeable in H-4 lamp sockets, deliberate and inadvertent. Some vehicle owners could deliberately install high-candela or noncomplying light sources because they believe that their use will result in increased "seeing light" with the effect that other drivers on the highway could be faced with unacceptable glare levels. Therefore, the argument runs, deliberate misuse must be prevented to protect other drivers.

The agency believes that periodic motor vehicle inspection in every State

would be the most effective way to prevent deliberate misuse. However, not all States have periodic inspections. One method to help prevent long-term, deliberate misuse would be to stop the production or U.S. distribution of high power H–4s with the P43t-38 base that would be compatible with the base of the HB2. However, there does not seem to be any legal means to stop such production or distribution since H–4 bulbs may be used in motorcycle headlamps. There is already concern about the current supply of high-candela bulbs presently in the U.S. replacement market and the short-term misuse problems that may result. The counter argument is that, although misuse is possible, there is no indication that it would occur to a significant degree, and that the problem appears to be largely hypothetical. This line of reasoning concludes that NHTSA regulations cannot cover every conceivable instance of possible misuse and should focus on demonstrated safety hazards.

The agency is also concerned that Standard No. 108's allowance of H–4 bulbs on motorcycles could lead to limited deliberate or inadvertent misuse on passenger cars and that H–4's could produce excessive glare because of their fit and filament tolerances. To prevent inadvertent misuse, the agency is proposing requirements that would distinguish the HB2, and its reflector, from motorcycle headlamps (both bulbs and reflector), using an H–4 or similar bulb. The lens and the bulb of a motorcycle headlamp produce a beam pattern meeting SAE Recommended Practice J584, different than that of an automotive headlamp. Therefore NHTSA is proposing that for nonsealed beam motorcycle headlamps using other than the standardized replaceable light sources allowed in Standard No. 108, both the bulb and the lens of the headlamp must be marked "For Motorcycle Use Only". The agency believes that these proposed requirements for marking bulbs and headlamps should be adequate to reduce substantially or prevent inadvertent misuse. It requests comment on the validity of this opinion, and on the proposed method for reducing the likelihood of misuse. It also welcomes other suggestions for reducing misuse.

Virtually all manufacturers opposed the unique cap and base for HB2 which was proposed in the initial notice. They argued that such a requirement would increase cost considerably and would not stop illegal wattage or design (no black cap) bulbs since illegal versions of the new design could be easily developed. In addition, they submitted that the net result would be proliferation of types of H-4 bulbs.

NHTSA agrees that a prohibition of the H–4 base design is unnecessary and that it is almost impossible to stop deliberate misuse of other light sources which are mechanically interchangeable with H–4.

Tolerances on the Fit Between the Base and Socket Of the HB2

In the proposal of May 1985, the basic reference for dimensions of the HB2 was ECE Regulation 20. This reference does not contain specifications for the bulb socket, and NHTSA's specifications were derived from IEC Publication 61–2D (Proposed Sheets 7004–39–3 and 7005–39–3 (for IEC Publication 61), which provide specifications for the cap and socket). Some commenters recommended ECE Regulation 37 Rev. 1 as a more appropriate reference. They also suggested IEC Publication 61 for the cap and socket. From these references NHTSA has selected the reflector bulb cavity P43t and the assembled base P43t–38 as the most appropriate specification for HB2.

NHTSA initially proposed a tight tolerance for dimension L on both the bulb and socket. In the May 1985 proposal, the agency reduced the tolerance of the socket dimension L to promote better fit. OSRAM recommended that the tolerance for critical fit, dimension M on both the bulb cap and holder, be reduced. NHTSA tentatively agrees that a reduced range for this dimension would provide better aim, and is proposing it and other changes.

The initial comments of OSRAM and Hella and also comments from Philips, Volkswagen, Rolls Royce, GM and GE suggested use of the existing H–4 bulb but with reduced filament, filament-to-shield, and filament location tolerances, and a new socket fit specification. OSRAM suggested new reduced base/socket fit and internal bulb filament tolerances—reduced from ECE values—which in its view assure that beam pattern and aim requirements are met after bulb replacement when using mechanical aiming. According to the commenters, this approach fosters international harmonization whereas the approach proposed by the agency does not. Thorn commented on the proposed ring and socket dimensions and suggested changes in tolerance to improve manufacturability. OSRAM and Volkswagen suggested new ECE references for referral to the H-4 bulb and socket.

The agency believes there is merit in these suggestions and is accordingly proposing reductions in tolerance on reflector cavity dimensions L, M, Z_1 Z, and the angle locating the two lower sockets for reference lugs for the HB2. HB2 cap tolerance reductions are also proposed on dimensions M, Z_1, and on the angle locating the two lower sockets for the reference lugs for the HB2. This tighter bulb-socket fit should assure correct aim with "any bulb" in a mechanically aimed headlamp using the HB2.

The agency proposes to place tight tolerances on the outermost diameter of the flange on the bulb and mating cylinder of the socket, (dimension M), and also to adjust the dimension of the alignment slots in the socket (dimension Z_1 and Z) to be compatible with the width of the corresponding tab on the bulb. Also, in order to prevent improper fit of the light source in the socket, the agency proposes reducing the fit tolerances on the angle locating the two lower sockets for the HB2 reference lugs and Z_1, in the reflector socket, by adopting an optional requirement on fit which is contained in IEC Publication 61 Sheet 7005–39–3 Note 3 (Lamp holder P43 for Lamps with Cap P43t–38).

Poor bulb fit in the reflector socket produces misaim. Vertical misaim can produce either loss of seeing distance or excessive glare light for oncoming motorists. The proposed adoption of these dimensions and tolerance should assure proper fit and aim in mechanically aimed headlamps.

Tolerance on the Location of HB2 Filaments

Many commenters pointed out that the tolerances on the location of the filament have a major effect on the accuracy of aim after both replacement. The consensus of the commenters including initial OSRAM and Philips comments was that the tolerance in the May 1985 proposal were not sufficiently small to assure proper aim after bulb replacement.

VW, in cooperation with OSRAM, provided data on photometric output of two headlamps, a 7-inch diameter "Bobi" and a Hella VW Jetta SAE modified rectangular lamp. Both lamps were designed to provide a beam pattern complying with Standard No. 108. H–4 bulbs were used which had filaments located at the nominal filament position as well as positions which were at the extremes of the ECE tolerances (ECE Regulation 37). Additionally, Philips provided a theoretical study of the effect of filament location.

OSRAM's and Philips second comments to the docket reflect their revised positions after the investigations

of the effect of the maximum permissible ECE out-of-tolerance filament positions. These concluded that the H–4 bulb—when manufactured within the tolerance as specified in ECE Regulation 37—is capable of satisfactory aim retention and full compliance with the photometric requirements as set forth in SAE J579c when inserted in headlamps designed to produce SAE light patterns.

However, the agency believes that there are two points which OSRAM and Philips have overlooked in reaching this conclusion. The first point is the fact that the lumen output of production bulbs can be approximately 10 percent higher or lower than the output of the bulbs they referenced. A review of the VW/OSRAM photometric data shows that a 10 percent increase or decrease at many of the test points would have resulted in failure to meet Standard No. 108's specifications. The second point is whether it is appropriate to use a ±¼ degree reaim on high gradient headlamps every time the bulb is replaced. The allowance for a ¼ degree reaim appears as a footnote to the test point tables of SAE J579c incorporated into Standard No. 108.

There are several aspects of this provision which raise the question whether it is appropriate to use it in the way that OSRAM has. One aspect is the rationale behind its inclusion in SAE J579c. The original purpose for the ¼ degree reaim allowance was to accommodate the level of accuracy of mounting and aiming equipment that was available in the late 1960's. The ¼ degree reaim assured manufacturers that, if a sealed beam headlamp (the only headlamp that was permitted for passenger cars at that time) were mounted and aimed in two different laboratories, the results would be more likely to be repeatable. Thus, the original intent of allowing ¼ degree reaim was to compensate for variations in accuracy of laboratory equipment. Now SAE J579c permits ±¼ degree tolerance in any direction at any test point. In addition, VW in its comments to the proposal on the HB–1 black cap (Docket No. 81–11; Notice 15), stated that ¼ degree reaim "is not related to filament tolerances and it is not appropriate to apply this requirement to any given headlamp/bulb combination for maintaining photometric test point values." This historical perspective suggests that it is inappropriate to apply a ¼ degree reaim to replaceable bulb headlamps when considering the variations in performance that result from interchangeable bulbs. This also appears to be the position of Ford in its comments to Notice 15 on filament tolerances for the HB3 and HB4.

Another aspect relevant to the ¼ degree reaim is that it was introduced for sealed beam headlamps, which, at that time (the late 1960's), had smooth beam patterns with relatively small gradient photometric patterns and when the use of high gradient headlamp bulbs such as the H–4 was not contemplated. For example, a shift of ¼ degree ordinarily might change the intensity by no more than 1000 cd at a test point but, with the sharp cut-off beam pattern which is produced by the H–4, a shift of ¼ degree can produce a 5000 cd. change in intensity. This would allow the intensity at a test point such as ½D–1 ½R to be as low as 3000 cd., compared to the 8000 cd. minimum specified in Standard No. 108. Based on this data, NHTSA proposes not to allow ¼ degree reaim. This is a change from the May 1985 HB2 proposal.

However, photometric test data provided by VW and OSRAM shows that it is not possible to meet photometric requirements upon bulb replacement without ±¼ degree reaim when using replacement bulbs which cover the full range of permissible ECE H–4 filament tolerances. Therefore if ±¼ degree reaim is stricken, it is also necessary to have filament tolerances lower than permissible ECE values.

As previously discussed, OSRAM and Philips recommended reduced bulb filament tolerances, indicating that they can meet these tolerances. With a combination of disallowance of reaim and these suggested reduced tolerances, a solution appears possible. The agency therefore proposes to eliminate the ¼ degree reaim allowance on each test point during photometric testing, adopt the reduced bulb filament tolerances that were initially suggested by OSRAM and Philips, and adopt bulb/socket fit tolerances which are revised from the May 1985 proposal.

The agency has chosen this rulemaking approach because it provides a more equitable sharing of the photometric compliance burden between bulb and headlamp manufacturers. It assures that good mechanical aim will occur with "any bulb", and that photometric requirements can be met without a ±¼ degree reaim. It reduces the potential safety problem of either excessive light above the horizontal (glare) or insufficient seeing distance due to inadequate light at the seeing distance point—both of which can easily occur because of the high gradient in the light pattern near horizontal—caused by the shield over the low beam filament. It is practicable because it proposes tolerance reductions recommended by major European light source manufacturers, OSRAM and Philips. Finally, it promotes international harmonization without degrading safety.

The agency also specifically requests comments on whether or not to apply prohibitions of ¼ degree reaim to headlamps using light sources other than HB2 since the rationale for not allowing ¼ degree reaim can also be applied to other headlamp types allowed in the current standard. The agency however, believes that this is a more critical issue with the HB2 because of its higher gradient light intensity characteristic. Comment is also requested on the appropriateness of the revised proposal on fit and filament tolerance reductions.

Bulb Rating, Performance Requirements

NHTSA originally proposed that maximum power and luminous flux be measured at 13.2 volts. General Motors commented that the photometric tables were established for 12.8 volts, and that the test voltage and luminous flux specified for all other headlamps was 12.8 volts. A headlamp designed for 13.2 volts would have an effective lower intensity when installed on a vehicle. It recommended that the HB2 bulb use a design voltage of 12.8 volts, and that the design luminous flux be changed from 1000 to 910 lumens on the lower beam and from 1650 to 1500 lumens on the upper beam (with tolerances of 10 percent for each). The agency tentatively agrees with this comment, and is proposing these values.

On the issue whether to permit "other means" of the type of obscuration that is provided by the "black cap", neither the HB1 nor the HB4 would have such an alternative means, under the May 1985 proposal. it is proposed the note in the ECE H–4 drawings which allow obscuration by means other than a black cap on the bulb be deleted from the drawings that describe the HB2.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a preliminary regulatory evaluation has been prepared for the May 13, 1985 notice and placed in the public docket. Since use of the proposed replaceable light source is optional, the proposal would not impose additional requirements or costs but would permit

manufacturers greater flexibility in the use of headlighting systems.

NHTSA has analyzed this proposal for the purpose of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing the proposal to amend 49 CFR Part 571 and § 571.108, Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, published on May 13, 1985 (50 FR 19961), would be amended as follows:

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. The proposed definition of "Standardized replaceable light source" in S3 *Definitions* is revised to read:

* * * * *

"Standardized replaceable light source" means an assembly of a capsule, base, and terminals as described in Figure 3 (Type HB1), Figure 19 (Type HB3), Figure 20 (Type HB4), and Figures W, X, Y, and Z (Type HB2).

3. A new paragraph S4.1.1.30 would be added to read:

* * * * *

S4.1.1.30 Each replaceable bulb headlamp that is designed to meet the photometric requirements of SAE Recommended Practice J584, and which is equipped with a bulb other than a standardized replaceable light source, shall have the words "For Motorcycle Use Only" in letters not less than 4 mm (.157 mm) in height permanently marked on the lens and the bulb.

* * * * *

4. In paragraph S4.1.1.36, the proposed revision of paragraph (a)(1) is revised to read:

* * * * *

(a)(1) Each replaceable bulb headlamp shall include components which are designed to conform to the applicable specifications of paragraph S4.1.1.38 and paragraph S4.1.1.39, and, as applicable Figure 3 *Specifications for the Type HB1 Standardized Replaceable Light Source*, Figures W, X, Y, and Z *Specifications for the Type HB2 Standardized Replaceable Light Source*, Figure 19 *Specifications for the Type HB3 Standardized Replaceable Light Source*, or Figure 20 *Specifications for the Type HB4 Standardized Replaceable Light Source*.

5. In the proposed revision of paragraph (b)(2) of S4.1.1.36, the period at the end of "December 1978" is removed, and the following language added: ", except that ¼ degree reaim is not allowed at test points when the HB2 light source reproduces the beam in whole or in part."

6. The second sentence in proposed paragraph S4.1.1.39(a) is revised to read: "A Type HB2 light source shall be designed to conform to the dimensions specified in Figures W, X, Y and Z."

7. The specification table in proposed paragraph S4.1.1.39(b) is revised as follows:

a. In the column headed "Specification", the word "Minimum" is deleted.

b. In the column headed "Lower beam", the maximum power, watts, for HB2 is changed to "65," and the luminous flux, lumens, for HB2 is changed to "910 plus or minus 10%."

c. In the column headed "Upper beam", the maximum power, watts, for HB2 is changed to "72," and the luminous flux, lumens, for HB2 is changed to "1500 plus or minus 10%."

8. The second sentence in proposed paragraph S4.1.1.39(d) is revised to read: "The test voltage shall be design voltage 12.8v."

9. In proposed paragraph S6.1 *Photometry*, the following is added: between "applicable," and "after": "except that ¼ degree reaim is not allowed at test points when an HB2 light source produces the beam in whole or in part,".

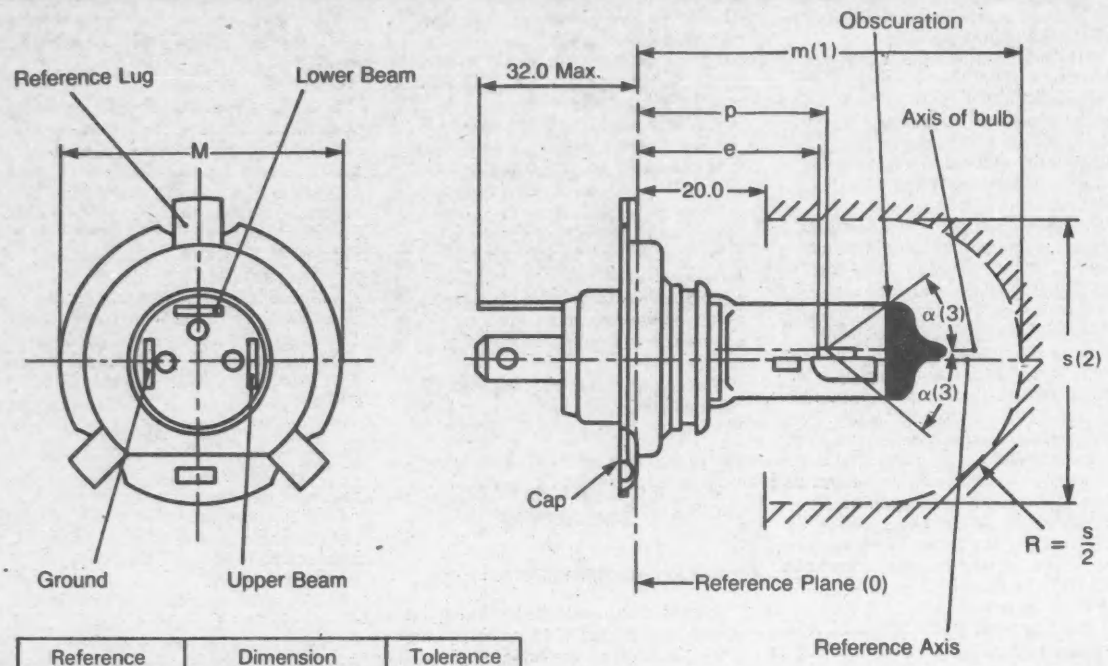
10. Figures W, X, Y, and Z are proposed to be added to § 571.108 as set forth below.

Issued on: June 4, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

BILLING CODE 4910-59-M



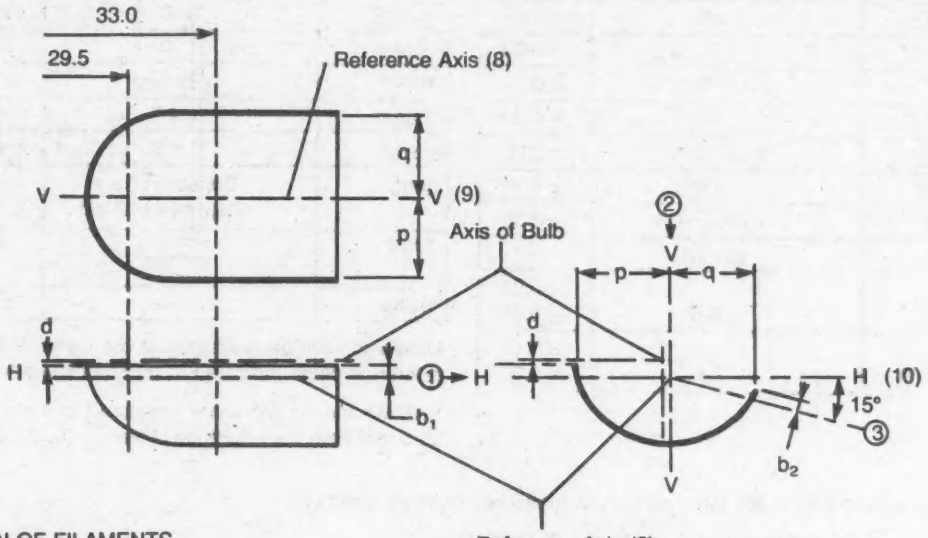
Reference	Dimension	Tolerance
e	28.5	+0.35 −0.15
p	28.95	—
m(1)	max. 60.0	—
s(2)	45.0	—
α(3)	max. 40°	—

Dimensions in millimeters
The drawings are not mandatory; their sole purpose is to show which dimensions must be verified.

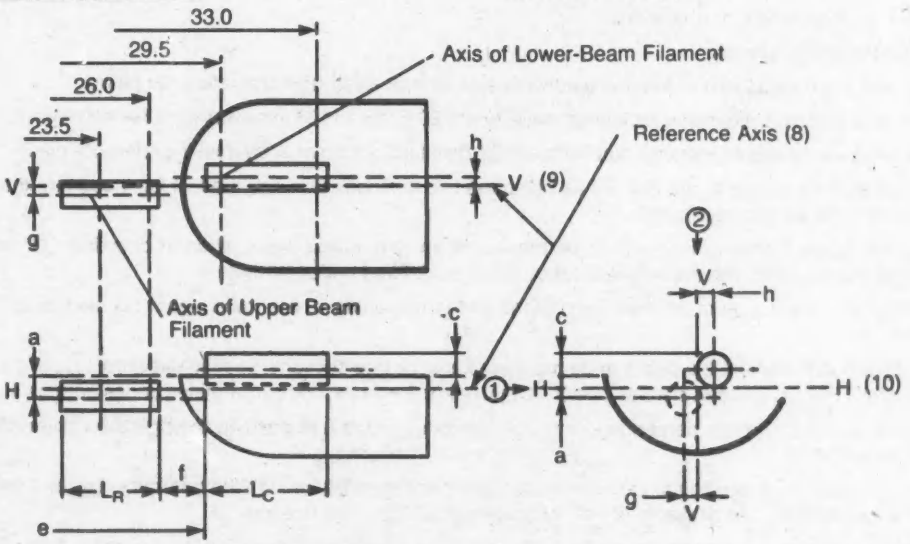
(0) The reference plane is the plane formed by the seating points of the three lugs of the base ring.
(1) "m" denotes the maximum length of the light source.
(2) It must be possible to insert the light source into a cylinder of diameter "s" concentric with the reference axis and limited at one end by a plane parallel to and 20 mm distant from the reference plane and at the other end by a hemisphere of radius s/2.
(3) The obscuration must extend at least as far as the cylindrical part of the glass bulb. It must also overlap the internal shield when the latter is viewed in a direction perpendicular to the reference axis.

Figure W . Type HB-2 Replaceable Light Source — Dimensional Specifications

POSITION OF SHIELD.



POSITION OF FILAMENTS.



(Also see continuation page)

Figure X-1 . Type HB-2 Replaceable Light Source — Shield and Filament Position Dimensional Specifications

Reference	Dimension	Tolerance
a/26*	0.8	± 0.20
a/23.5*	0.8	± 0.20
b_1/29.5*	0	± 0.20
b_1/33*	b_1/29.5vm**	± 0.20
b_2/29.5*	0	± 0.20
b_2/33*	b_2/29.5vm**	± 0.20
c/29.5*	0.6	± 0.30
c/33*	c/29.5vm**	± 0.30
d	min 0.1	—
e(6)	28.5	+ 0.35 − 0.15
f(4)(5)(7)	1.7	− 0.30 + 0.30

Dimension	Reference	Tolerance
g/26*	0	± 0.3
g/23.5*	0	± 0.3
h/29.5*	0	± 0.2
h/33*	h/29.5vm**	± 0.35
$1_{R(5)(7)}$	4.5	± 0.4
$1_{c(5)(5)}$	5.5	± 0.8
P/33*	Depends on the shape of the shield	—
q/33*	$\frac{p+q}{2}$	± 0.6
b_1-b_2	0	± 0.25

* Dimension will be measured at the distance from the reference plane indicated in mm afer the stroke.

** ./29.5vm means the value measured at a distance of 29.5 mm from the reference plane.

Dimensions indicated in the table above are measured in three directions:

Direction ① for dimensions a, b_1, c, d, e, f, 1_R and 1C;

Direction ② for dimensions g, h, p and q;

Direction ③ for dimensions b_2.

Dimensions p and q are measured in a plane parallel to and 33 mm away from the reference plane.

Dimensions b_1, b_2, c and h are measured in planes parallel to and 20.5 mm and 33 mm away from the reference plane.

Dimensions a and g are measured in planes parallel to and 26.0 mm and 23.5 mm away from the reference plane.

(4) The end turns of the filaments are defined as being the first luminous turn and the last luminous turn that are at substantially the correct helix angle.

(5) For the lower-beam filament the points to be measured are the intersections, seen in direction ①, of the lateral edge of the shield with the outside of the end turns defined under footnote 4.

(6) "e" denotes the distance from the reference plane to the beginning of the lower-beam filament as defined under footnote 4.

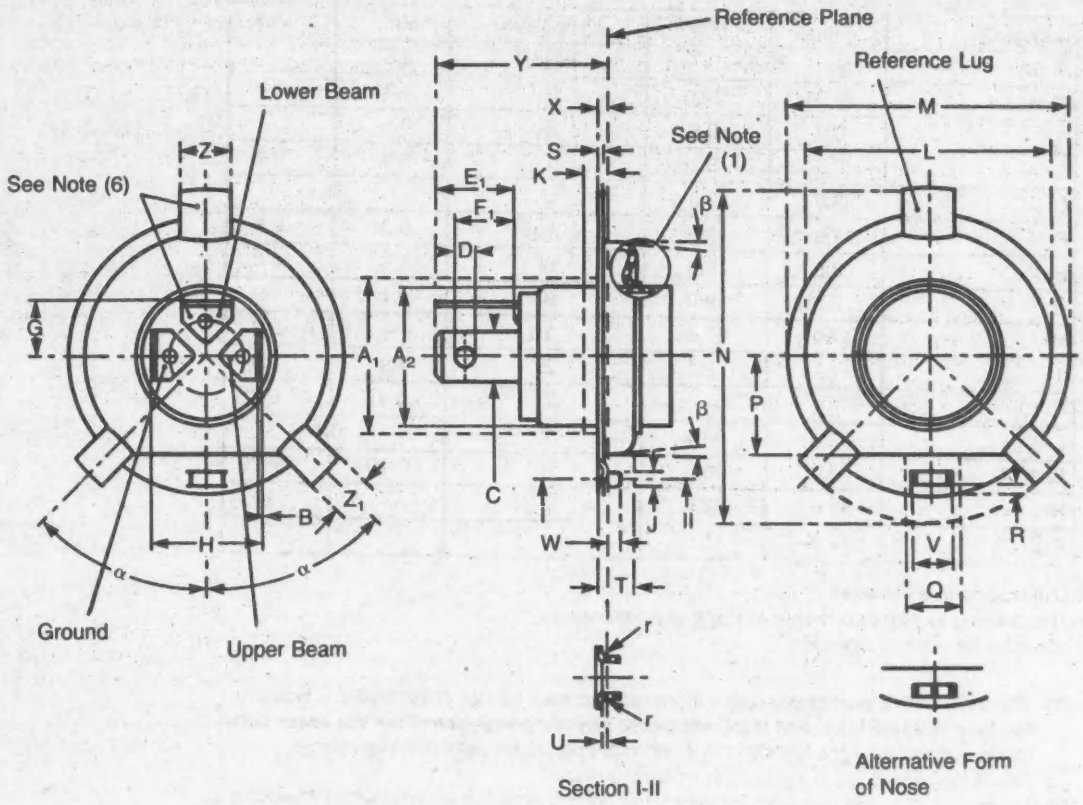
(7) For the upper-beam filament the points to be measured are the intersections, seen in direction ①, of a plane parallel to plane HH and situated at a distance of 0.8 mm below it, with the end turns defined under footnote 4.

(8) The reference axis is the line perpendicular to the reference plane and passing through the center of the circle of diameter "M".

(9) Plane VV is the plane perpendicular to the reference plane and passing through the reference axis and through the intersection of the circle of diameter "M" with the axis of the reference lug.

(10) Plane HH is the plane perpendicular to both the reference plane and plane VV and passing through the reference axis.

Figure X-2. (Continued) Type HB-2 Replaceable Light Source — Shield and Filament Position Dimensional Specifications



(Also see continuation page)

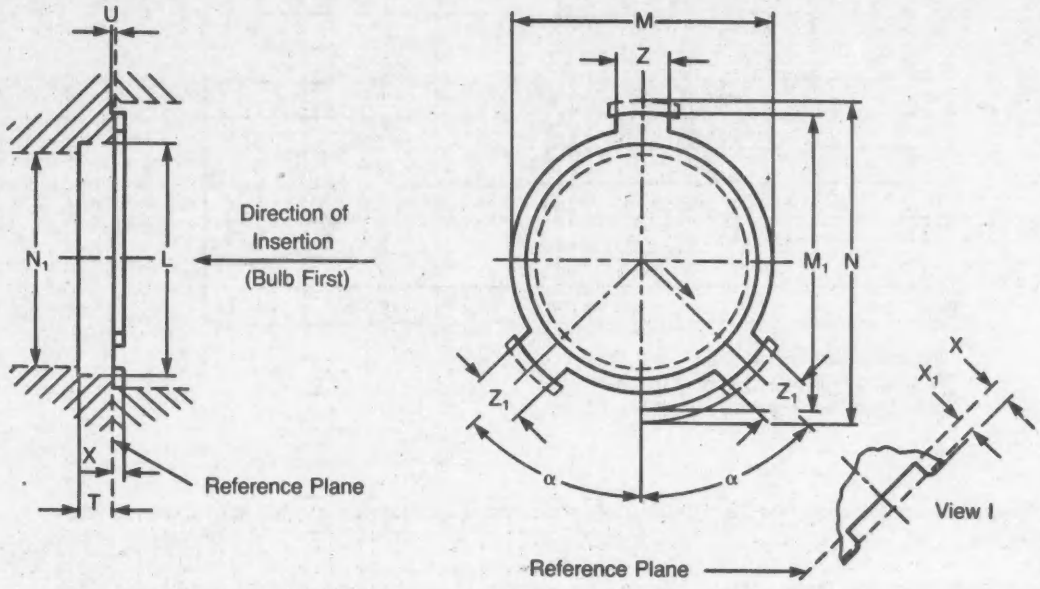
Figure Y-1 . Type HB-2 Replaceable Light Source — Assembled Base P43t-38 on Finished Light Source — Dimensional Specifications

Dimension	Min.	Max.	Dimension	Min.	Max.
A_1 (8)	25.0		Q (2) (7)	8.5	—
A_2 (10)	21.94	22.0	R	1.3	1.7
B	0.7	0.8	S	0.5	—
C	7.7	8.1	T	5.0	6.0
D	3.0	3.3	U	(9)	
E_1	11.8	13.6	V (2) (5)	6.3	6.5
F_1	8.8	10.3	W	1.8	2.2
G	8.5	9.0	X	1.1	1.3
H	17.0	17.9	Y	—	32.0
J	1.9	2.1	Z	7.9	8.0
K (10)	2.0		Z_1	6.0	6.2
L (2) (4)	37.8	38.0	r	(9)	
M (3)	42.9	43.0	α	44°40'	45°20'
N	51.6	52.0	β	—	5°
P (2) (7)	15.3	15.5			

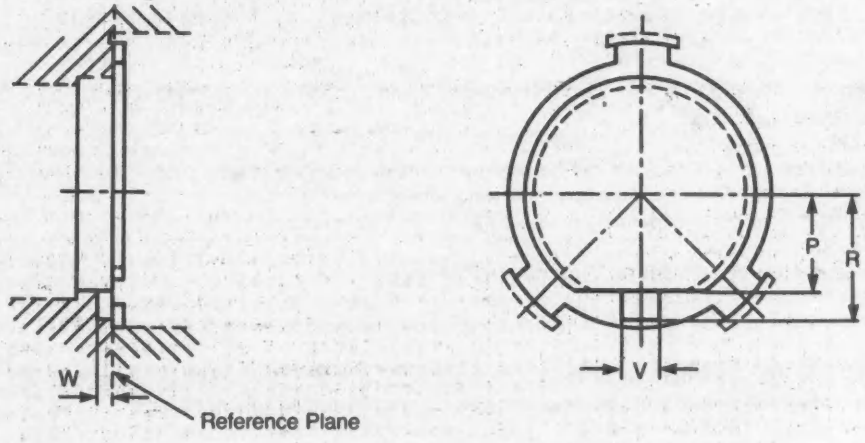
Dimensions in millimeters.
The drawing is intended only to indicate the dimensions essential for interchangeability

(1) The form of this part of the ring is optional and may be flat or recessed. However, the form shall be such that it will not cause any abnormal glare from the lower beam filament when the light source is in its normal operating position in the vehicle.
(2) This dimension is measured at the reference plane.
(3) Dimension M is the diameter on which the light source is centered when checking its dimensional characteristics.
(4) The maximum allowable eccentricity of cylinder L with respect to the circle of diameter M is 0.05 mm.
(5) The maximum allowable displacement of the center of the nose from the line running through the centers of the reference lug and the circle of diameter M is 0.05 mm. The sides of the nose shall not bend outwards.
(6) [Reserved]
(7) Dimension Q denotes the minimum width over which both the minimum and maximum limits of dimension P shall be measured. Outside dimension Q, the maximum limit for dimension P shall not be exceeded.
(8) The means of securing the ring in the headlamp shall not encroach on this cylindrical zone, which extends over the full length of the shell shown on this side of the ring.
(9) The radius r shall be equal to or smaller than dimension U.
(10) Beyond distance K, in the direction of the contact tabs, both the minimum and the maximum limits of dimension A_2 shall be measured.

Figure Y-2. (Continued) Type HB-2 Replaceable Light Source — Assembled Base P43t-38 on Finished Light Source — Dimensional Specifications



OPTIONAL FEATURES TO ENSURE CORRECT INSERTION



(Also see continuation page)

Figure Z-1 . Type HB-2 Replaceable Light Source Reflector Bulb Cavity P43t — Dimensional Specifications

Dimension	Min.	Max.
L(4)	38.05	38.13
M	43.02(1)	43.1
M_1	—	49.0
N(5)	52.5	
N_1	(6)	
P(3)	16.0	—
R(4)	20.5	—
T	5.5	—

Dimension	Min.	Max
U	0.4	—
V(4)	6.8	—
W(4)	2.5	—
X(3)	1.8	—
X_1(2)	1.4	—
Z(3)	8.05	8.13
Z_1(3)	7.5	7.7
α	44°40'	45°20'

Dimensions in millimeters
The drawing is intended only to indicate the dimensions essential for interchangeability.

The socket shall be so designed that the light source will be retained in it only when the light source is in the correct position.

The means of retention shall make contact only with the prefocus base ring and the total force exerted, when the light source is in position, shall be not less than 10 N and be not more than 60 N.

(1) This value shall be complied with between the rim of the socket and the reference plane (dimension X). However, it may be reduced to 38.5 mm within the dimensions Z and Z_1 which correspond with the support points for the lugs of the ring.

(2) Dimension X_1 denotes the minimum distance over which dimensions Z and Z_1 shall apply. Outside dimension X_1 the slots may be chamfered or rounded.

(3) Wrong adjustment of the light source in the socket can be prevented in different ways, e.g.:
— by applying the additional optional features. (See lower drawing on Figure^{Z-1}).
— by using a sufficiently large value for X depending on the construction of the socket.

(4) If dimension L is smaller than 40.5 mm, dimension V, R and W shall apply.

(5) Dimension N delineates the minimum free space to be reserved for the three lugs of the ring.

(6) Dimension N_1 shall be not less than 35 mm diameter over a distance of 20 mm from the reference plane and shall be not less than 45 mm diameter at any distance greater than 20 mm from the reference plane.

Figure Z-2. (Continued) Type HB-2 Replaceable Light Source Reflector Bulb Cavity P43t — Dimensional Specifications

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federal register

Friday
June 13, 1986

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24105; Amdt. No. 93-52]

High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule on reconsideration; request for comments.

SUMMARY: This action amends Subpart S of 14 CFR Part 93, which allocates air carrier and commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport and which permits those slots to be transferred for any consideration. This amendment adopts certain modifications to the rules as they pertain to the allocation of slots utilized for international operations. In addition, certain other adjustments are made to the procedural requirements in Subpart S. These changes are made in response to comments received after issuance of Subpart S on December 16, 1985.

DATES: Effective date: June 13, 1986.

Comment date: July 28, 1986.

ADDRESS: Comments on this regulation may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24105, 800 Independence Avenue, SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, AGC-2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 426-3775.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this action is a final rule, interested persons are invited to comment on the rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule 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.

Availability of Document

Any person may obtain a copy of this document 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 amendment number of the document.

Background

The FAA has broad authority under the Federal Aviation Act (FAAct) of 1958, as amended, to regulate and control the use of navigable airspace of the United States. Under Section 307(a) of the FAAct (49 U.S.C. Section 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under Section 307(c) of the FAAct (49 U.S.C. Section 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Federal Aviation Regulations (FAR) Amendment No. 93-13, effective April 27, 1969 (33 FR 17896, December 3, 1968), designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was made permanent in 1973 (38 FR 29463, October 25, 1973). The rule establishes limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: Air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators. The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation.

The entire quota for Newark International Airport was suspended indefinitely, although the report was retained in the rule as a high density airport.

A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operating during a special hour or 30-minute period at one of the high density airports. Under Subpart K, slots at Kennedy and National Airports are allocated by the hour, and slots at O'Hare and LaGuardia Airports are located by the half-hour. The hours of the day during which slots are required for IFR operations at the high density airports are: 6:45 a.m. to 9:15 p.m. at O'Hare, 3:00 p.m. to 8:00 p.m. at Kennedy, and 6:00 a.m. to 12:00 a.m. at LaGuardia and National Airports. All parties are reminded that in accordance with Subpart K, scheduled operations at a high density airport during the above-specified hours may be conducted only with appropriate IFR reservations.

On December 16, 1985, the Department of Transportation issued a final rule which added a new Subpart S to Part 93 to permit air carrier and commuter operator slots at the high density airports to be transferred for any consideration. In summary form, Subpart S provides as follows:

—Separate slot pools for air carrier, commuter, and other operators are retained. The numbers contained in the High Density Rule were not changed by this amendment.

—Air carriers and commuters found by the FAA to be holding permanent slots which were in use on December 16, 1985 were allocated those slots.

—Beginning on April 1, 1986, any person may purchase, sell, trade, or lease air carrier or commuter slots (except for international and certain essential air service (EAS) slots) in any number at any of the high density airports.

—International and EAS slots are treated specially and transfer of such slots is restricted.

—Each slot is "tagged" with a priority number, assigned by lottery, to determine the order of withdrawal if necessary.
—Slots not used 65 percent of the time in a 2-month period must be returned to the FAA (use-or-lose).
—A lottery procedure is provided for the allocation of newly available slots and slots returned to the FAA or lost under the use-or-lose provision.
—The use-or-lose provision does not apply to slots allocated by lottery until 60 days after allocation (180 days after allocation to a new entrant awaiting a Part 121 or Part 135 certificate, and 90 days after allocation to any other new entrant).
—Slots will be made available for additional EAS operations, as requested and approved by the Office of the Secretary (OST), by taking slots from incumbent operators if not otherwise available.
—Slots will be made available for additional international operations at O'Hare and John F. Kennedy Airports within 2 hours of the time requested by taking slots from incumbent operators if not otherwise available.
—Slots utilized for general aviation operations are not affected by this amendment.
—This amendment did not create property rights in slots.
—Slots may be recalled or eliminated by the agency for operational reasons.

On December 16, 1985, the Department issued an NPRM (Notice 85–25) (50 FR 52199; December 20, 1985) which proposed to withdraw up to 5 percent of the slots used by air carrier and commuter operators to be reallocated to new entrants by a lottery.

On March 6, 1986, the Department issued a Special Federal Aviation Regulation (SFAR) 48 (51 FR 8632; March 12, 1986) which established a special procedure for a one-time withdrawal of slots used by air carriers at three of the high density airports—LaGuardia, O'Hare, and Washington National. Those slots and other slots available at each airport were withdrawn and reallocated (March 25–27) through a special lottery to new entrants and incumbent carriers with less than 8 slots at the airport in question. A second lottery will be held by December 15, 1986, to allocate those slots not allocated under the first lottery and those allocated but not utilized.

In the preambles to the December 16, 1985, rule and to Notice 85–25, the Department solicited comments from interested parties on all aspects of the rule and notice. All parties were advised that any part of the rule might be changed in light of comments received. In order to maximize public input in the process, a public hearing was held on January 21, 1986.

All comments received, as well as statements made at the hearing, were thoroughly reviewed prior to the issuance of this amendment. Numerous comments were submitted and various adjustments were proposed. In fact, most commenters suggested their own versions of how to adjust the rules. In selecting the adjustments to be made, the Department had to be mindful of statutory and public interest responsibilities including the need to place maximum reliance on competitive market forces, the maintenance of air service to small communities, international air service obligations, the avoidance of immediate disruption of the existing air service patterns at the affected airports, and maximum scheduling flexibility for the air carriers and for the public. The Department believes that this amendment fully reflects those considerations.

Slot Transfer and Allocation Rules Adopted: Overview.

After considering the issues discussed in comments on the final rule and at the public hearing, the Department of Transportation is amending Subpart S of Part 93 of the Federal Aviation Regulations, 14 CFR Part 93, to adjust the regulatory procedures and rules applicable to the allocation and transfer of high density airport slots. In summary form, the changes made by this amendment are:

- Carriers which held and operated permanent slots used for international service at Kennedy and O'Hare Airports during the previous summer or winter season will be allocated comparable slots for identical time periods for the following summer or winter seasons, respectively. DOT will allocate slots for *additional* international operations at O'Hare within 2 hours of the time requested.
- DOT *may* allocate slots for *additional* international operations at Kennedy based on identified factors.
- A carrier may permanently designate any of its slots in its base at Kennedy Airport as a seasonal slot to be utilized by the carrier only during the designated season and thus to be subject to use-or-lose and the other provisions of Subpart S only during that designated season.
- A provision is added to allow FAA to waive the use-or-lose provision in unusual circumstances outside the control of the airline.

Allocation of slots for EAS operations is not changed by this rule.

This rule is issued without further notice because comments were solicited on the rule issued on December 16, and all issues addressed in this action have been the subject of comment by interested parties.

The following is a summary of this amendment. A more detailed section-by-section description appears later in the amendment.

Summary of the Rule

International Operations

1. December Rule

Under the December final rule, the Department of Transportation determined that existing international operators would be grandfathered slot rights and that, as a matter of international aviation policy, the allocation of additional slots for international operations at Kennedy and O'Hare Airports would be made by the FAA based on requests from foreign and U.S. air carrier and commuter airlines conducting international operations. Under existing § 93.217, slots for these additional international operations would be allocated administratively, upon request to the FAA by an appropriately authorized officer of the carrier. In the event that the number of unallocated slots was insufficient to meet valid requests for international operations, the FAA would be required to withdraw allocated domestic slots to meet the international demand. In providing slots for international operations, the FAA would attempt to meet requests in the hours requested. However, in order to alleviate disruption of domestic operations, the rule provided that slots would be allocated to carriers in a time period within 2 hours of the time requested. That provision was inserted to enable the agency to avoid withdrawing slots from a domestic operator to allow an additional international operation if there were unallocated slots available reasonably close in time to the time requested by the international operator.

Under paragraph (c) of § 93.217, slots would not have to be allocated to a foreign operator on this basis if the Office of the Secretary determined that the country of that operator allocates slots to U.S. operators on a basis more restrictive than that provided by Subpart S. For example, if a foreign country allocates slots at its capacity constrained airports in a manner which limits increased operations by U.S. carriers, operators from that country should not automatically expect to receive slots for increased operations under the rule.

Subpart S established other provisions which apply to international operations. For example, a slot used for such operations cannot be sold or leased but may be traded on a one-for-one basis for another international slot at

the same airport. In addition, while the use-or-lose provisions of §93.227 do not apply to international slots, international operators are required to return unused slots. Also, slots used for international operations are not subject to loss under the withdrawal lotteries.

2. *Comments*

A number of comments were submitted on many of the provisions applicable to international operations. The issues which generated the largest number of comments were the 2-hour window for allocation, the need for some recognition of the seasonality of international operations, particularly at Kennedy Airport, and the treatment of charter air carriers under the rule.

The International Air Transportation Association (IATA) welcomed the recognition given by the Department to international air service agreements and the decision to exclude international slots from any buy-sell or lottery provision. IATA went on to state, however, that procedural provisions should be changed to reflect more accurately the nature of international air services and the need for compatibility with slot allocation methods in other countries. As to the "2-hour" provision, IATA added:

> Many international operators will not be able to accommodate a 2-hour mismatch with slots available at capacity limited airports outside the U.S. Moreover, such an international operator would appear to have no remedy, except to try to trade slots with another operator.

Concerning seasonality, IATA stated:

> Thus, international carriers, whose operations during the summer season typically are greater than in the winter season, will have to request additional slots pursuant to § 93.217 for each summer season. Moreover, unless the slots it needs for the next winter season happen to be the same as those used during the summer, it will have to re-request slots for that winter season. The 2-hour rule, unless amended as we suggest, will compound the problem because international carriers will not be assured of getting slots during the same time period from one season to the next equivalent season. The obvious solution to this inequity is to assign slots permanently on an equivalent season basis.

American Airlines, commenting on the "2-hour" rule, stated:

> [The international carriers voiced their concerns regarding access to JFK. The focus of their comments seemed to be the fear that DOT's proposal to award international slots within a (+)/(−) 2-hour window would disrupt international air operations completely.
>
> * * * * *
>
> American shares these concerns regarding this four hour window of flexibility. American schedules its aircraft to achieve maximum, efficient use. If the Department exercises this right, American will either have to cancel flights or arrange its schedule so that certain aircraft are idle for long periods of time.

LOT Polish Airlines stated:

> LOT wishes to voice its objections to § 93.217(a)(5) which assures allocation of slots only "within two hours of the time period requested." From the standpoint of international transatlantic operations, this four hour gap . . . can, in practical terms, mean the denial of the requested slot.

Pan Am, commenting on "seasonality" stated:

> In sharp contrast to domestic operations, the demand for international transportation peaks markedly in the summer, and falls off sharply during the winter. The affect [sic] of this peaking is an increase in demand for slots in the summer and a corresponding decrease in demand for slots for the winter. . . . Without doubt, carriers serving international operations will require additional slots for the summer—which will create a particularly difficult problem at JFK, given its high percentage of international flights.

Trans World Airlines (TWA) commenting on the 2-hour rule, stated:

> [I]nternational carriers would not be certain of obtaining needed JFK slots timed to integrate (1) with domestic connecting schedules, both online and interline, at JFK, or (2) with arrival and departure times obtained abroad through the IATA slot coordination process.

TWA added:

> TWA's proposal basically involves the development of a season slot grandfathering process covering both domestic and international operations similar to that employed at IATA slot coordinated airports. This process would enable a carrier to rely on certain arrival and departure times from summer to summer and winter to winter which would integrate with the arrival and departure times currently held by that carrier at the origin and destination international airports.

A number of other commenters, both U.S. and foreign operators, submitted similar comments on international allocations at Kennedy Airport to those quoted above. The general consensus of those commenters is that the "2-hour" window could cause scheduling difficulties and that there should be some recognition of seasonal schedules operated year after year.

3. Final Amendment

(a) *Seasonality.* As previously discussed, the allocation provisions in existing Subpart S were designed to ensure access for international operations at JFK and O'Hare while limiting disruption of domestic operations. The Department, however, recognizes the intricacies of creating schedules throughout large portions of the world and the need to avoid disrupting established schedules, including those that are operated seasonally. The Department further recognizes the concerns expressed by many of the commenters as to the importance of consistency of the allocation mechanisms utilized throughout the world.

The existing rule might have resulted in some disruption from season to season for international operations, particularly in the summer at Kennedy Airport. It is important for many of these operations, including most transatlantic flights, to be operated in the same hourly period from year to year because of scheduling constraints at the foreign destination. Variation from year to year could also disrupt connecting operations. Although the December 16 rule would have provided access at Kennedy for international operations, the slots might have been in different hours from year to year. To avoid potential seasonal disruptions, the Department has decided to ensure that historically seasonal operations will be allocated slots in the precise time periods as held and operated in the previous year's season. This will resolve most if not all of the concerns raised by international operators about the "2-hour window"

Under this amendment, slots that the FAA determines to have been permanent international slots held by any operator (including charter operators) at Kennedy or O'Hare Airport during the summer of 1985 will be allocated to the same carrier for the summer season of 1986 if that carrier made a request for slots by February 1, 1986, in accordance with Subpart S.

During the week of April 7, 1986, FAA met with operators at Kennedy Airport and determined the allocation of slots for the summer 1986 season at Kennedy. All permanent seasonal slots described in the previous paragraph were included in that allocation. However, as FAA informed carriers during the session, not all the allocations made during the session will be deemed permanent. This pertains particularly to allocations made by FAA to meet the immediate needs of the 1986 summer season for new flights for which slots were not held in the past. FAA will notify carriers of its determinations in this regard in the near future.

This rule makes a further seasonality change that pertains to air carrier slots that were allocated at Kennedy Airport under Section 93.215 of the December 16 rule. Those slots were allocated on a permanent basis, even though some

carriers used them only seasonally. Comments were filed by carriers at Kennedy Airport pointing out that many of the domestic seasonal operations provide passenger feed to seasonal international operations and, thus, they requested that the Department take some action to allow carriers to hold the slots without a use-or-lose penalty in the season of non-use. Therefore, to avoid undue disruption of these kinds of operations, § 93.215 has been amended to permit any carrier holding a slot (domestic or international) in its permanent base to designate the slot as a winter or summer slot and to utilize the slot in the same season year to year; that is, if a carrier allocated such a slot designates it as a winter slot, the carrier may not use it during the summer and may not transfer it to another carrier for summer use. The carrier would then be subject to the use-or-lose provision only during the designated season. This would allow carriers to utilize slots in the same hours summer after summer. Such a seasonality designation would be permanent, i.e., it cannot be retracted at a later time. This designation may be made in any year on or before the dates provided in the rule. This aspect of the amendment applies only to operations at Kennedy Airport since no commenter identified a similar problem at O'Hare.

Generally, the preceding seasonality provisions will allow carriers which utilize slots in one season to have those slots returned to them for the same season of the following year. Since this should encourage carriers to release slots for periods of time when they will not be using them, it may in turn make it easier to accommodate additional international requests and, in particular, to accommodate charter operations.

It should be noted that under the December 16 rule, domestic slots withdrawn for reallocation to international carriers for summer operations would be returned to the carrier from which they were withdrawn for the winter season. This has not been changed and, together with the seasonality amendments described above, will have the beneficial effect of enhancing the ability of all carriers to plan their operations, since both international and domestic carriers will know which slots they will be able to operate in each season, without having to be concerned about excessive withdrawals.

(b) *Allocation of slots for new international operations.* In view of the increased reliability provided for international operations (i.e., that slots for seasonal operations may be re-obtained in the same hour in corresponding future seasons), the Department reconsidered whether it was necessary to retain the December 16 provision quaranteeing that all international operations would be allocated slots, even when this would require the withdrawal of slots from domestic operations.

Based upon an analysis of this issue, including comments received, the Department has determined that withdrawal of a slot from an existing operation in order to accommodate a new international operation when other means of access are reasonably available is inconsistent with the prevailing international practice for allocating slots at slot-controlled airports in other countries. It is generally accepted throughout the rest of the world that requests by operators for additional slots, including schedule changes, will be accommodated if there are unutilized slots, but that existing operating rights will not be cancelled.

In this regard, the Department has reviewed the requests for international slots at Kennedy Airport submitted by the carriers pursuant to § 93.217 for slots not in the December 16, 1985, base. U.S. and foreign air carriers submitted far more requests for additional international slots for the summer of 1986 than the Department had anticipated. Granting all those requests in the precise times for which the slots were sought would have required the Department to withdraw a large number of slots from scheduled domestic air carriers pursuant to § 93.223. Such a withdrawal would have been extremely disruptive to domestic air carriers and the travelling public, particularly since a large proportion of the passengers on these domestic flights connect with international flights. Furthermore, if new international flights were freely accommodated at Kennedy Airport, there could be significant problems handling the increased number of passengers in the terminals.

Therefore, in view of the increased scheduling reliability accorded to international operations through the introduction of seasonality, the prospect of significant disruption of domestic operations associated with withdrawing domestic slots for international operations, the prevailing international practices for allocating slots, and customs and immigration capacity at Kennedy Airport, the Department has revised the manner in which it will allocate additional slots for international operations at that airport. The most significant change is that at Kennedy Airport slots will not be withdrawn from existing operations to meet international requests unless it is necessary to do so in order to meet international obligations. The Department believes that international carriers have other means of access to the New York metropolitan area, including scheduling flights outside the 5-hour high-density period at Kennedy Airport, scheduling flights to Newark Airport (which is not currently limited under the High Density Rule), and making voluntary arrangements (including trades and, where appropriate, slot purchase or lease) to use a high density slot held by another carrier. Furthermore, international operations will be given priority over domestic operations in the allocation of any vacant slots during the high-density period at Kennedy. These procedures will serve to accommodate most international requests. Therefore, only in rare cases does the Department believe it will be necessary to withdraw a slot from a domestic operator in order to permit an additional international operation to be scheduled during the high-density period.

Consistent with international practice, the FAA may find it advisable to meet with international carriers and interested domestic carriers prior to each season. This might be particularly helpful to both the FAA and the carriers to enable schedule changes at Kennedy Airport and to otherwise seek voluntary adjustments that would provide for international slot needs.

These voluntary adjustments and the allocation of vacant slot times will be the primary methods for a carrier to obtain a new slot for a new international operation during the high-density hours at Kennedy Airport. In this regard, carriers have a legitimate need to know what criteria the Department will use to decide to whom the vacant slots will be allocated. The Department will take the following, among other things, into consideration in deciding how to allocate vacant slots among requesting carriers:

(i) International obligations;

(ii) Airport terminal capacity, including facilities and personnel of the U.S Customs Service and the U.S. Immigration and Naturalization Service;

(iii) The extent and regularity of intended use of a slot; and

(iv) Any extraordinary scheduling constraints faced by a carrier.

At O'Hare Airport, which is slot controlled throughout the day, a request for an additional international scheduled operation will still be accommodated within 2 hours of the request. In applying this provision, the Department will use the preceding list of

four criteria identified for Kennedy Airport in assign slot times to determine whether a request for a slot for a scheduled international operation will be granted in the half-hour period requested or up to 2 hours different from the request. If vacant slots are available within 2 hours of slot requests made by one or more carriers, the Department will use the aforementioned criteria to allocate slots. If no vacant slots exist within 2 hours of the request, the Department envisions granting a slot in the half-hour period requested.

Thus, at both airports, air carriers conducting scheduled international operations will be given some opportunity for additional guaranteed access to the airports. Furthermore, if carriers wish to obtain slots for international operations during particular hours, they may always do so by trading, leasing, or buying slots from domestic operators.

With the changes in this rulemaking that pertain to international operations, the Department has attempted to provide a slot allocation system for international operations at Kennedy and O'Hare Airports that is fair, workable, and generally consistent with prevailing international practices at foreign slot-controlled airports. However, the Department recognizes that the complex and dynamic nature of international scheduling may give rise to special circumstances which were not anticipated by the rule. In such cases, the affected carrier may file an exemption request with the FAA. The FAA and the Office of the Secretary will review the request and take appropriate action on a timely basis. Exemption requests should be based upon special circumstances. For example, if the Department allocated slots at Kennedy Airport to foreign carriers as a result of granting new route authority, we would consider granting exemptions for U.S. carriers to obtain slots in order to maintain a competitive balance, where suitable slots are not otherwise available.

(c) *International slot trades.* Carriers with international operations at LaGuardia Airport commented that the December rule made little or no provision for them to make schedule changes. Under the December 16 rule, a slot used for international operations could be traded for another slot, but only on a one-for-one basis for another international slot at the same airport. At LaGuardia, this type of trade was the only opportunity provided for international operators to adjust schedules, and it was extremely limited because there are only a few international operations at LaGuardia. In order to provide greater flexibility to adjust schedules, the Department will enlarge the opportunity for trading by revising the rule to permit an international slot held by a carrier to be traded to another carrier for a slot (domestic or international) on a one-for-one basis for the same airport. This applies to all three airports with international operations (LaGuardia, Kennedy, and O'Hare Airports) and will make it easier for carriers to make changes in their international schedules, at any time during the year and without requiring government intervention. These trades must occur between two separate airlines (as opposed to an airline trading within its own base or with an airline under common ownership as defined in § 93.213(c)). Further, the trades must be for slots in a different hour or half-hour period (depending on the requirements for that airport). The result of the trade or series of trades of international slots must be to obtain slots in different hours. If not, the trades will be denied. Without such a restriction, a U.S. carrier holding international slots could, virtually at will, interchange international and domestic slots so as to protect them indefinitely from withdrawal under the slot withdrawal procedures of § 93.223. On March 31, 1986, American Airlines filed a petition for exemption seeking approval of the trade of an international slot for a domestic slot at LaGuardia. On April 15, 1986, Air Canada filed an answer in which it requested that all carriers operating at LaGuardia be permitted to trade an international slot for a domestic slot. These petitions are effectively granted by the adoption of this amendment.

(d) *International charter operations.* A number of international charter operators submitted comments asking the Department to reconsider a number of the provisions contained in the rule, while others suggested new provisions that should be added. Almost all commenters stated concerns that the rule did not grandfather slots to charter operators as is provided for international scheduled operators. In fact, the December 16 rule did grandfather "permanent" charter operations on the same basis as scheduled operations.

This is not changed by these amendments, except that the grandfathering of slots for international operations is extended to cover seasonality, and, again, charter operations are covered on the same basis as scheduled operations. That is, the changes incorporated in this rule will grandfather on a seasonal basis those permanent slots that were held and operated by charter operators on a seasonal basis in 1985 at Kennedy and O'Hare Airports (as well as in future years), as evidenced by scheduling committee and FAA records.

Many charter operators also were concerned about their ability to obtain slots for additional operations, i.e., in addition to grandfathered operations. Under existing rules, the only provisions made for such additional charter operations has been that reservations could be made for vacant slots within 48 hours of use. Many charter operators, however, were concerned that this provision would not be a reliable basis for scheduling charters, including notifying passengers of the hour and day of a flight and making arrangements with tour operators before the planned operation.

Accordingly, this rule change includes a new provision for administrative allocation of certain types of vacant slots that will allow charter operators to make reservations weeks or months in advance of use of the slot. In some cases, the new provision will allow charter operators to receive slots for multiple-day periods for the entire season. This new provision is described in detail later. In order to aid the FAA in processing slot requests for charter operations, requests for slots should be submitted as early as an operator anticipates the need for the slot, but no earlier than one season in advance.

Several charter operators also expressed concern that the December rule's restriction on the transfer of international slots would prevent a charter operator from making a slot available to another operator when the charter operator could not operate because of, for example, a last-minute equipment failure. It is common for contracts between a charter operator (i.e., the direct air carrier) and a tour operator (i.e., an indirect air carrier) to require the charter operator to find a back-up carrier to operate the flight in such circumstances. The Department has determined that under such circumstances, when there is a contractual obligation, it will permit the use of an international slot by a different carrier than the one to which the slot was allocated in order for the charter flight to operate. The agency reserves the right to request additional information from operators prior to or following the substitution of another carrier in order to ensure the proper utilization of international slots in substitute service situations.

The Department believes that the above provisions for charter operations are adequate to meet most charter needs. Although the grandfathering of slots applies equally to charter and scheduled operations, the provisions established herein for the allocation of new operations applies only to scheduled operations. The Department believes that complete parity between charter and scheduled operations is not required. Charter operations can utilize slots at varying hours throughout a season, can often be accommodated during off-peak hours, and can be accommodated at alternate airports. On the basis of previous provisions for charter operations in the U.S., this approach is reasonably calculated to accommodate the majority of, if not all, charter operations. Moreover, this approach is consistent with prevailing practices of other nations and would preserve charter operators' ability to obtain access to high density airports.

As mentioned above, in deciding the number of slots to be withdrawn from domestic operations, the Department also has to be cognizant of the effect on domestic operations by such withdrawals. Without some limitation, the domestic air transportation system could be seriously restricted. Such a result would not be in the public interest. Therefore, this amendment continues the limitation in the December amendment. As a result, charter and scheduled operators are treated identically for most purposes; however, slots withdrawn from incumbent domestic scheduled carriers will only be allocated to international scheduled operators. (As previously stated, as a result of the seasonality provision, we anticipate there will be very few such withdrawals.)

(e) *International all-cargo operations.* On February 24, Flying Tiger Line, Inc., petitioned for an exemption so that the U.S. segments of its intercontinental cargo flights would be deemed international flights for purposes of Subpart S. Existing § 93.217(a)(1) defines U.S. flight segments of foreign carriers as international flights, but flights of U.S. carriers are considered international under Subpart S only if the takeoff or landing is at a foreign point. Flying Tiger requested relief from this policy on the basis of unique characteristics of all-cargo service, and the unfair competitive position in which the rule placed Flying Tiger in relation to foreign cargo operators. The Department finds that some measure of relief is warranted and that this relief can be afforded to all U.S. flag cargo operators by rule rather than exemption. Accordingly, the Department is adding a new § 93.227(k) to provide that the Chief Counsel of the FAA may waive the slot use-or-lose provisions of § 93.227(a) for a slot used for a U.S. flight segment of an intercontinental all-cargo flight. The carrier must request the waiver in writing and must return the slot to the FAA during the periods when it will not be used.

(f) *Use-or-lose provisions.* A number of commenters requested changes to the use-or-lose provisions of § 93.227. Several commenters, including the Regional Airline Association (RAA), requested that the 65 percent use requirement be modified to reflect the fact that many carriers schedule slots only 5 days out of 7, or 71 percent of the time. Relatively few cancellations of scheduled flights, therefore, would result in the loss of slots which were being substantially used as scheduled. The FAA has interpreted § 93.224 of Subpart S, Return of Slots, to permit the permanent return of slots for days of the week in which the holding carrier does not intend to schedule a flight. A carrier intending to operate a flight 5 days a week, therefore, may return the slot to FAA for the other 2 days. The carrier's slot use will be measured against the 5-day total, which substantially reduces the number of flights which must be operated to maintain the 65 percent use rate. This practice resolves the problem raised in the comments, and amendment of the rule to address the problem is not required.

Several commenters requested a longer period in which to calculate the slot use percentage. Section 93.227 of the rule provides that slots must be used 65 percent of the time in a 2-month period. The primary alternate periods requested were 13 weeks and 6 months, the latter being the period specified in the commuter scheduling committee agreements. The Department does not agree that sufficient reason exists to warrant adoption of a period longer than 2 months.

Both air carrier and commuter representatives requested that the rule provide for certain reasonable exceptions to the use-or-lose requirements, to allow for situations in which a carrier would lose a slot due to circumstances beyond its control. Examples offered were other government regulations, airport construction, partial closure of an airport, unusual weather, involuntary grounding of aircraft, and air traffic delays. The Department agrees that it would be unfair for a carrier to lose a slot for non-use when it had scheduled the slot but was prevented from using it 65 percent of the time by unforeseen circumstances totally beyond the control of the carrier. Accordingly, § 93.227 is also amended to permit the FAA to waive the use-or-lose provisions in the event of highly unusual and unpredictable conditions which are beyond the control of the slot-holder and which exist for a substantial period of time. A duration of 15 percent of the reporting period, or 9 days, is specified on the basis that it is a reasonable definition of "substantial period of time" for this purpose. Authority to waive the use-or-lose provisions is delegated to the Chief Counsel of the FAA. The rule does not provide a list of every circumstance which would warrant the waiver, because of the difficulty in anticipating all the kinds of situations which might arise. However, protracted severe weather and grounding of an aircraft type are mentioned as examples.

(g) *Lottery Procedures.* Some commenters questioned the size of the set-aside for new entrants in the reallocation lottery. The Department has reconsidered the provision in § 93.225(h) of the rule permitting new entrant carriers a set-aside of 15 percent of available slots in the first round of the lottery. Upon consideration of the number of allocated slots at each airport and of the small number of slots likely to be returned or lost, the Department believes that a 15 percent set-aside will be insufficient to provide a viable slot base for a carrier initiating service. While a larger set-aside will not guarantee that a new entrant will obtain all the slots it needs, it will promote a better opportunity for more new carriers. Accordingly, the Department is amending Section 93.225(h) to specify a set-aside of 25 percent of available slots for new entrants.

Several commenters requested that the procedures for distribution of unused slots by lottery under § 93.225 be amended or clarified. The Regional Carriers Scheduling Committee (RCSC) requested a provision prohibiting a new entrant from participating in a lottery for distribution of slots which that new entrant had received in a previous lottery and failed to use. The Department agrees that some penalty is appropriate since carriers needing the slots are being denied their use in such circumstances. However, a permanent ban on participation in Subpart S lotteries is too harsh a penalty. Under § 93.225(e), a ban on participation as a new entrant will apply only to the next lottery.

RSCS also requested clarification that, if new entrant participants do not select

all of the 15 percent of slots set aside for new entrants in any lottery, all remaining slots in the set-aside pool be distributed to incumbents. As previously mentioned the set-aside has been changed to 25 percent of available slots. With the larger set-aside, it is even more likely that some of the slots set aside would not be selected by new entrants. The Department agrees that these unselected slots should be available to incumbent carriers participating in the lottery, and a change based on this comment is being adopted.

ATA commented that carriers which do not operate aircraft with 56 or more seats should not participate in lotteries for air carrier slots. The Department adopted a provision to that effect in SFAR 48 for the initial lottery held on March 27, and has interpreted the existing provisions of § 93.225 to limit participation in air carrier lotteries to carries capable of operating air carrier aircraft within the meaning of Part 93, § 93.123(c). Accordingly, this issue has been resolved without amending the rule. This does not change the right of carriers once they have slots to use smaller aircraft in accordance with § 93.221.

(h) *Transfer of slots.* In adopting SFAR 48, the Department considered the limitation on transferability of slots newly acquired in a lottery to trades on a one-for-one basis at the same airport. In the SFAR, transfer of slots obtained in the special lottery is restricted, but a slot may be traded for more than one slot as well as for one slot. This change permits a carrier to increase its slot base by trading a valuable slot obtained in a lottery for two or more slots of less value, if it chooses. The Department believes this policy should apply in all slot lotteries, and Section 93.221(a)(5) is amended to incorporate this change.

(i) *Common ownership.* In recent months there have been several mergers or acquisitions of carriers holding slots at high density airports. In several cases these carriers have elected to continue operating as separate entities. For purposes of Subpart S, commonly owned or controlled carriers are considered a single entity under § 93.213(c). As a result, these carriers could transfer slots among themselves without reporting the transfers to the FAA, which would make the agency's administration of the slot base more difficult. Accordingly, the Department is requiring, in a revised § 93.221(d), that carriers commonly owned or controlled within the meaning of § 93.213(c) report intra-company transfers to the FAA.

(j) *Trading restriction.* The restriction on slot transfers to trades on a one-for-one basis, set forth in the original § 93.221(d), is removed from the rule. The restriction expired of its own terms on April 1, 1986.

(k) *Administration allocation of available slots.* Several commenters, including ATA, requested that some mechanism be established to provide for the allocation of available slots in the intervening time between lotteries. The Department does not contemplate lotteries more frequently than twice each year, in consideration of the relatively small number of slots which will be available and the expense of conducting a lottery. ATA argues that slots should not go unused for up to 6 months while waiting for a lottery.

The Department agrees in part. The Department believes that prime slots should be retained for distribution on a permanent basis by lottery to ensure that all eligible carriers have an equal chance to obtain them in random procedure. However, there are certain hours at LaGuardia and National Airports in which all slots are not allocated simply because of low demand. These hours are 6:00 to 7:00 a.m. and 10:00 p.m. to 12:00 a.m. Also, a number of partial-week slots, such as for Saturday and Sunday only, have been returned to the FAA at each of the airports as have slots for short periods of time (e.g., 2 weeks) by international operators. Because demand for these types of slots is low, there is no reason to reserve these slots for distribution in a procedure designed for allocation of few valuable slots among many interested carriers.

A related need arises for administrative allocation of slots at Kennedy and O'Hare Airports, to accommodate short-term requests for international scheduled and charter flights. As discussed earlier in this preamble, international operators are required to notify FAA if an international slot will be used for a certain period of time or every day of the week. The existing rule requires such notification but does not specify the procedure for reallocating temporarily returned slots. Designating a procedure for short-term reallocation of available slots for international operations, including charters, provides the mechanism requested by many commenters for flexibility and responsiveness to requests for international slots.

For the above reasons, the Department is adding a new § 93.226 to provide for administrative allocation of off-hour slots at LaGuardia and National Airports and slots available for fewer than 5 days a week and slots available for short periods of time at any of the four airports.

(l) *Withdrawal of slots.* A number of comments were received on various aspects of the withdrawal regulations set forth in § 93.223. The Department does not consider that any basic change in withdrawal procedures is necessary. However, the Department does believe that it would be beneficial to revise one technical aspect of the rule protecting carriers holding eight or fewer slots. Section 93.223(f) of the December 16 rule provided that slots obtained by initial allocation on December 16, 1985, or by lottery will not be withdrawn from a carrier holding eight or fewer non-international slots at that airport. Therefore, under the existing rule, slots acquired by purchase or trade would not be protected from withdrawal. The Department agrees that this could unfairly penalize new entrants and incumbent carriers with a small number of slots which acquire slots through purchases or trades. Accordingly, the Department is amending paragraph (f) to extend the protection from withdrawal to all slots held by a carrier with eight or fewer non-international slots. It is not the Department's intent to permit carriers with less than eight slots to enter into lease arrangements (for example, sale and leaseback) for the purpose of protecting another carrier's slots from withdrawal. If the Department observes any such abuse of the provisions intended for the benefit of carriers with a small number of slots, the Department will take further appropriate action.

(m) *Reporting requirements.* RCSC and other commenters requested that the Department delete the requirement for the reporting of each flight as an arrival or departure in the slot use reports under § 93.227(i), at airports at which there is no restriction on arrivals and departures. This information is useful to air traffic but not essential at airports at which arrival and departures are not restricted. However, voluntary arrival and departure restrictions may be applied on a seasonal basis only, making it impractical to impose and rescind this reporting requirement by rulemaking. Accordingly, the Department believes the requirement should be retained for all high density airports. If there is a burden in a particular case, relief will be afforded by a waiver from the FAA.

The slot use reporting requirement in § 93.227(i) is amended to add a requirement for carriers to identify any common control or ownership relationships with other carriers as defined in § 93.213(c). The Department has no other consistent source of this information, which is necessary for

administration of the rule. The Department is also adding a requirement to report the equipment used in operating each slot held. This information is necessary to monitor proper use of commuter and air carrier slots by appropriate aircraft. Most carriers are now reporting this information and the Department anticipates that the additional reporting burden will be minimal.

Section-by-Section Analysis of the Amendments

Section 93.213 Definitions and General Provisions.

Section 93.213 sets forth definitions to be applied in Subpart S. This amendment adds definitions for the terms "summer season" and "winter season." They are defined as follows:

Summer season—the period of time from the fourth Sunday in April until the fourth Sunday in October.

Winter season—the period of time from the fourth Sunday in October until the fourth Sunday in April.

These terms are applicable at Kennedy and O'Hare Airports and are generally consistent with international scheduling practices.

Section 93.215 Initial Allocation of Slots.

A new paragraph (c) is added to this section which allows a carrier at Kennedy Airport to designate any slot (including domestic slots) as a seasonal slot (either a summer season slot or a winter season slot). Those terms are defined in § 93.213. In order to designate a slot as a seasonal slot, a carrier holding the slot must notify the FAA (at the address specified in § 93.225(e)), in writing, by May 15 for the 1986 summer season and future winter seasons, and by October 15 for future summer seasons. Thus, a carrier may convert one or more of its slots to seasonal slots. Once a slot is declared to be a seasonal slot by the carrier, the carrier permanently loses use of that slot during the other season. This would allow a carrier to have domestic slots every summer and not have to worry about the use-or-lose provisions during the winter season. Of course, the use-or-lose provision does apply during the season in which the slot is being utilized.

Section 93.217 Allocation of slots for international operations.

Section 93.217 sets forth the method of allocation for international operations at the high density airports. The provisons have been changed from the December 16 rule, although some aspects of this section remain the same. Paragraph (a)(1) has been changed to clarify that allocation of slots for new international operations is limited to scheduled operations. International charter operations may continue to hold slots that were in their historic base but will not be allocated additional slots under this paragraph. Paragraph (a)(2) has been changed to allow a carrier to trade an international slot in one hour or half-hour for a domestic slot held by a different carrier in a different hour or half-hour. A carrier cannot trade with itself and cannot trade for another slot within the same hour or half-hour. The phrase added at the end of that paragraph, "for the purpose of conducting such an operation in a different hour or half-hour," allows the FAA to deny a trade if it resulted practically in a trade of slots within the same hour or half-hour.

Paragraphs (a)(5) to (9) set forth new methods for allocation of slots for international operations. Paragraph (5) is the grandfathering section for seasonal international operations at Kennedy and O'Hare Airports. Under this paragraph, a carrier which held a permanent summer season slot and used it to conduct an international operation in the summer season of 1985 is entitled to the same slot in the following year for the identical timeframe in which the slot was utilized, if the carrier requested the slot by February 1, 1986. The following is an example of how this provision would function:

Carrier A held and operated a 1700 departure at Kennedy Airport in the summer of 1985 which it utilized for an international operation. The slot was utilized every Monday and Thursday from June 1, 1985, to September 15, 1985. If Carrier A submitted a request, in writing, by February 1, 1986, for that slot for the summer season of 1986, it will be allocated that slot for every Monday and Thursday from June 1, 1986, to September 15, 1986. If Carrier A operates the slot during 1986 for the specified period and if it requests it again for use during the summer of 1987, it will be allocated the same slot for the comparable period of 1987.

If Carrier B held a slot every Sunday and Monday from June 1, 1985 to October 1, 1986, but only utilized the slot from July 1, 1986, to October 1, 1986, then it would only be eligible to be allocated that slot, under paragraph (5) from July 1, 1987, to October 1, 1987. The carrier could request additional slots or a change in the hour operated at Kennedy Airport under paragraph (8).

Each carrier requesting that it be grandfathered slots from season-to-season must submit its entire seasonal schedule to the FAA (domestic and international slots) noting any requested changes from the previous year. This will ensure that all submittals are similar and make it easier for the FAA to differentiate requests for additional slots from requests for a change in slot times or requests for return of seasonal slots.

Paragraph (6) basically leaves unchanged the "2-hour" rule (as it existed in old paragraph (a)(5)) for allocation of slots for new international scheduled passenger operations at O'Hare Airport. Those requests must be submitted in writing by the dates listed in the paragraph and will be allocated within 2 hours of the time requested.

Paragraph (7) emphasizes that slots at LaGuardia Airport will only be allocated for international operations if required by specific bilateral agreement and, when allocated, slots will be made available within the hour requested. This is similar to the language which appeared in old paragraph (a)(1).

Paragraph (8) sets forth the mechanism by which slots for additional or changed operations (moved from one hour to another) will be allocated for scheduled passenger operations at Kennedy Airport. If a request is submitted (in accordance with the notification requirements of the paragraph) and a slot is available, the slot will be allocated. If a slot is not available in the hour requested, a slot will be withdrawn from a domestic operation for allocation if the Office of the Secretary determines that such an allocation is required by international obligations. The Department expects that this provision will be used rarely. It must be emphasized that allocations under § 93.217(a)(8) will be made only to international scheduled operations. Since slots will be withdrawn only from scheduled operations, allocations will be made only to this type of operation.

Paragraph (9) sets forth the criteria which will be utilized to determine which of several requesting carriers will get a vacant slot at Kennedy Airport (in accordance with paragraph (8)), and which carrier will be allocated a vacant slot in a half-hour different from that requested at O'Hare Airport in accordance with paragraph (6). Consideration of international obligations and U.S. and international aviation interests have been the basis emphasized for promulgation of the December 16 provisions relating to international slots and continues to be the primary obligation of the Department in this area. Recognition of the number of vacant slots available is necessary to ensure that U.S. domestic operations are not affected in such a manner as to disrupt existing operations, including flights that connect with international flights. Finally, there has to be some recognition of the general ability of the airport terminal to

handle additional international operations before slots are allocated for such operations. For example, there would be no purpose in withdrawing slots from domestic service to provide additional international operations at Kennedy Airport during the peak hours if in fact Federal inspection agency facilities could not accommodate them then.

Paragraph (b) is unchanged from Subpart S as originally adopted.

Paragraph (c) contains the procedure to be followed if a carrier is offered a slot in an hour or half-hour other than one requested. For example, at O'Hare, a carrier may be offered a 1700 slot although an 1800 slot is requested. If offered the 1700 slot, the carrier would have 14 days to accept it and must repeat the certification statement required by § 93.221(e).

Paragraphs (d) and (e) are unchanged from the December 16 rule, except that paragraph (d) was formerly designated as paragraph (c).

Section 93.221 Transfer of slots.

In Section 93.221(a)(5), the restriction on trades of slots obtained in a lottery is changed from limiting trades to a one-for-one basis to permit trades of one for one or more slots for each slot subject to the restriction. This change provides additional opportunities for carriers obtaining slots without increasing the incentive for speculation in lottery slots.

Section 93.221(d), which restricted transfer prior to April 1, 1986, to trades on a one-for-one basis at the same airport, is removed. The restriction expired by its own terms on April 1. A new paragraph (d) is added to require that commonly owned or controlled carriers report intra-company transfers to the FAA. This provision is needed for the FAA to track slot usage.

Section 93.223 Slot withdrawal.

Section 93.223(f), as initially adopted, provides that slots acquired through grandfathering under § 93.215 or by lottery will not be withdrawn from a carrier with eight or fewer non-international slots at an airport. This paragraph is amended to extend the protection from withdrawal to slots acquired in trade or by purchase.

Section 93.225 Lottery of available slots.

Section 93.225(e) is amended by adding an additional limitation to the requirements for participation in a slot lottery as a new entrant. The added language precludes carriers that have obtained slots in the previous lottery and failed to operate them from participating in the next lottery as a new entrant. (The carrier could, however, participate in the lottery with the status of an incumbent.) A penalty of this sort is needed to discourage carriers from seeking slots in a lottery that they are not likely to use, to the detriment of carriers ready, willing and able to use those slots.

In paragraph (h) of § 93.225, the 15 percent set-aside for new entrant carriers in slot lotteries is changed to 25 percent. In consideration of the number of slots expected to be available in the lottery pools, a 25 percent guarantee is needed as a more meaningful new entrant preference.

Section 93.226 Allocation of slots in low-demand periods.

A new section, § 93.226, is added to the rule to provide for the administrative allocation by the FAA of off-hour slots and partial-week slots when appropriate.

Section 93.226(a) provides that the FAA will allocate available slots, upon request, for the following time periods:

(1) Any hour for which a slot is available less than 5 days per week.

(2) Any time period for which a slot is available less than a full season.

(3) For LaGuardia and Washington National Airports, slots in the following hours:

(i) 6:00 a.m.–6:59 a.m.

(ii) 10:00 p.m.–midnight.

Section 93.226(b) limits allocations under this new section to operators already having the economic and operating authority to make immediate use of the slots. Slots will be made available under this paragraph for international operations and domestic operations, including cargo and charter operations as well as scheduled passenger operations.

Section 93.226(c) provides the procedure for requesting allocations under § 93.226. Section 93.226(d) permits FAA to suspend allocation of available slots under this section upon a determination that the remaining slots should be allocated by lottery. This provision will preserve slots for distribution by lottery when it becomes apparent that demand is increasing to the point where a random allocation procedure is inappropriate.

Section 93.226(e) makes it clear that slots may be allocated under this section on a seasonal basis or for limited periods of time (e.g., a week or a month).

Section 93.227 Slot use and loss.

Section 93.227(i) is amended by adding a requirement for carriers which are affected by the common ownership and control provisions of § 93.213(c) to report any such relationship in their slot use reports. Also added to this paragraph is a requirement to report the equipment used in operating each slot.

New § 93.227(j) is added to permit the FAA Chief Counsel to waive the 65–percent use-or-lose requirement of § 93.227(a), if one condition or a series of conditions beyond the carrier's control prevented use of the slot for a period of 9 days or more (15 percent of the 2-month reporting period). This provision permits the retention of slots where operation of the minimum use requirements would be manifestly unfair. The request for such a waiver should be submitted with the carrier's use-or-lose report and must be signed by the person submitting the report.

A new paragraph (k) is added to provide that the Chief Counsel of the FAA may grant a waiver from the § 93.227 use-or-lose requirements for a U.S. operation which is a continuation segment of an intercontinental all-cargo flight. The slot must be returned to FAA when not used.

Regulatory Evaluation

Regulatory Flexibility Act Determination

The changes contained in this rulemaking affect primarily international air carrier operations.

As discussed above, this rule should result in minimal benefits or costs to U.S. carriers, with two limited exceptions. First, carriers obtaining slots in a lottery under § 93.225 will benefit to the extent of the value of the slots obtained. Some slots, particularly air carrier slots in prime hours, may have a substantial value. However, few such slots are expected to be available for allocation by lottery. Also, a relatively large number of carriers will be eligible for participation in each lottery. Therefore, the likelihood of any single carrier obtaining more than two high-value slots is small, and the percentage of carriers which will obtain a substantial benefit in any particular lottery will be small.

Second, international charter operators may experience a slight increase in difficulty in obtaining a slot in a desired hour, although the procedures adopted herein are similar to past scheduling practices as well as international practices. As a result, these carriers may incur some degree of cost associated with rescheduling of flights or operating in non-optimum hours for their respective types of operations. However, it is the Department's intent to accommodate international charter flights when

possible, consistent with the requirements of scheduled operations, and the proportionate number of carriers affected to any substantial degree is expected to be very small.

Small operators will not be disproportionately affected in any discernible way by this rule. Accordingly, the Department has determined that the rule will not, if enacted, have a significant economic impact on a substantial number of small entities.

For the reasons set forth above, the Department has determined that this amendment (1) is not a major rule under Executive Order 12291; (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation prepared for this action can be obtained from the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

International Trade Impact Analysis

This rule will not influence or affect the sale of foreign products or services domestically or the sale of U.S. products or services in foreign countries. Therefore, the Department certifies that this rule will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the U.S. The Department also certifies that the rule will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Paperwork Reduction Act

This amendment provides for relatively minor changes to the required reporting of certain information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provision of Subpart S. OMB Approval Number 2120–0524 has been assigned to Subpart S.

Effective Date

This rule contains a number of provisions which provide benefits to both carriers and the FAA in providing for the immediate distribution of slots, in resolving uncertainty in the scheduling of international operations, and in streamlining procedures for administration of Subpart S. Accordingly, I find that good cause exists for making this amendment effective upon publication.

List of Subjects in 14 CFR, Part 93

Aviation safety, Air traffic control.

Adoption of the Amendment

For the reasons set out above, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is amended as follows:

PART 93—[AMENDED]

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a) 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

2. In § 93.213, paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 93.213 Definitions and general provisions.

(a) For purposes of this subpart—

* * * * *

(3) "Summer season" means the period of time from the fourth Sunday in April until the fourth Sunday in October.

(4) "Winter season" means the period of time from the fourth Sunday in October until the fourth Sunday in April.

3. In § 93.215, by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding new paragraph (c) to read as follows:

§ 93.215 Initial allocation of slots.

* * * * *

(c) A carrier may permanently designate a slot it holds at Kennedy International Airport as a seasonal slot, to be held by the carrier only during the corresponding season in future years, if it notifies the FAA (at the address specified in § 93.225(e)), in writing, the preceding winter seasons or by October 15 of the preceding year for summer seasons.

* * * * *

4. By revising § 93.217 to read as follows:

§ 93.217 Allocation of slots for international operations and applicable limitations.

(a) Any air carrier or commuter operator having the authority to conduct international operations shall be provided slots for those operations subject to the following conditions and the other provisions of this section:

(1) The slot may be used only for a flight segment in which either the takeoff or landing is at a foreign point or, for foreign operators, the flight segment is a continuation of a flight that begins or ends at a foreign point. Slots may be obtained and used under this section only for operations at Kennedy and O'Hare airports unless otherwise required by bilateral agreement and only for scheduled service unless the requesting carrier qualifies for the slot on the basis of historic seasonal operations, under § 93.217(a)(5).

(2) Slots used for an operation described in paragraph (a)(1) of this section may not be bought, sold, leased, or otherwise transferred, except that such a slot may be traded to another slot-holder on a one-for-one basis for a slot at the same airport in a different hour or half-hour period if the trade is for the purpose of conducting such an operation in a different hour or half-hour period.

(3) Slots used for operations described in paragraph (a)(1) of this section must be returned to the FAA if the slot will not be used for such operations for more than a 2-week period.

(4) Each air carrier or commuter operator having a slot that is used for operations described in paragraph (a)(1) of this section but is not used every day of the week shall notify the office specified in § 93.221(a)(1) in writing of those days on which the slots will not be used.

(5) At Kennedy and O'Hare Airports, a slot shall be allocated, upon request, for seasonal international operations, including charter operations, if the Chief Counsel of the FAA determines that the slot had been permanently allocated to and used by the requesting carrier in the same hour and for the same time period during the corresponding season of the preceding year. Requests for such slots must be submitted to the office specified in § 93.221(a)(1) by May 15 for operations to be conducted during the following winter season and by October 15 for the following summer season. For operations during the 1986 summer season, requests under this paragraph must have been submitted to the FAA on or before February 1, 1986. Each carrier requesting a slot under this paragraph must submit its entire international schedule at the relevant airport for the particular season, noting which requests are in addition to or changes from the previous year.

(6) Additional slots shall be allocated at O'Hare Airport for international scheduled air carrier and commuter operations (beyond those slots allocated under § 93.215 and § 93.217(a)(5)) if a request is submitted to the office specified in § 93.221(a)(1) by May 15 for operations to commence during the following winter season and by October 15 for operations to commence during the following summer season. These slots will be allocated within 2 hours of the time period requested.

(7) If required by bilateral agreement, additional slots shall be allocated at LaGuardia Airport for international scheduled passenger operations within the hour requested.

(8) To the extent vacant slots are available, additional slots during the high-density hours shall be allocated at Kennedy Airport for new international scheduled air carrier and commuter operations (beyond those operations for which slots have been allocated under §§ 93.215 and 93.217(a)(5)), if a request is submitted to the office specified in § 93.221(a)(1) by May 15 for operations to commence during the following winter season and by October 15 for operations to commence during the following summer season. In addition, slots may be withdrawn from domestic operations for operations at Kennedy Airport under this paragraph if required by international obligations.

(9) In determining the hour in which a slot request under §§ 93.217(a)(6) and 93.217(a)(8) will be granted, the following will be taken into consideration, among other things:

(i) The availability of vacant slot times;

(ii) International obligations;

(iii) Airport terminal capacity, including facilities and personnel of the U.S. Customs Service and the U.S. Immigration and Naturalization Service;

(iv) The extent and regularity of intended use of a slot; and

(v) Schedule constraints of carriers requesting slots.

(b) If a slot allocated under § 93.215 was scheduled for an operation described in paragraph (a)(1) of this section on December 16, 1985, its use shall be subject to the requirements of paragraphs (a)(1) through (a)(4) of this section. The requirements also apply to slots used for international operations at LaGuardia Airport.

(c) If a slot is offered to a carrier in other than the hour requested, the carrier shall have 14 days after the date of the offer to accept the newly offered slot. Acceptance must be in writing and sent to the office specified in § 93.221(a)(1) and must repeat the certified statements required by paragraph (e) of this section.

(d) The Office of the Secretary of Transportation reserves the right not to apply the provisions of this section, concerning the allocation of slots, to any foreign air carrier or commuter operator of a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided by this subpart. Decisions not to apply the provisions of this section will be made by the Office of the Secretary of Transportation.

(e) Each request for slots under this section shall state the airport, days of the week and time of the day of the desired slots and the period of time the slots are to be used. Each request shall identify whether the slot is requested under paragraph (a)(5), (6), or (8) and identify any changes from the previous year if requested under both paragraphs. The request must be accompanied by a certified statement signed by an officer of the operator indicating that the operator has or has contracted for aircraft capable of being utilized in using the slots requested and that the operator has bona fide plans to use the requested slots for operations described in paragraph (a).

5. By amending paragraph (a)(5) of § 93.221 to remove "on a one-for-one basis" wherever it appears and substitute "for one or more than one slot".

6. By revising paragraph (d) of § 93.221 to read as follows:

§ 93.221 Transfer of slots.

* * * * *

(d) Air carriers and commuter operators considered to be a single operator under the provisions of § 93.213(c) of this Subpart but operating under separate names shall report transfers of slots between them.

7. By revising paragraph (f) of § 93.223 to read as follows:

§ 93.223 Slot withdrawal.

* * * * *

(f) Notwithstanding other provisions in this section, the FAA shall not withdraw slots from any carrier or commuter operator holding eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

8. Section 93.225 is amended by revising paragraphs (e) and (h) to read as follows:

§ 93.225 Lottery of available slots.

* * * * *

(e) Each U.S. air carrier or commuter operator, as appropriate, operating at the airport shall be included in the lottery. Any U.S. carrier which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishing to initiate service at the airport, shall be included in the lottery if that operator notifies, in writing, the Office of the Chief Counsel, Docket Section, AGC–204, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The notification must be in duplicate and must be received 15 days prior to the lottery date. The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in § 93.213(c).

* * * * *

(h) During the first selection sequence, 25 percent of the slots available but no less than two slots shall be reserved for selection by new entrant carriers. If new entrant carriers do not select all of the slots set aside for new entrant carriers in a lottery, incumbent carriers may select the remaining slots.

* * * * *

9. By adding a new § 93.226 to read as follows:

§ 93.226 Allocation of slots in low-demand periods.

(a) If there are available slots in the following time periods and there are no pending requests for international or EAS operations at these times, FAA will allocate slots upon request on a first-come, first-served basis, as set forth in this section:

(1) Any period for which a slot is available less than 5 days per week.

(2) Any time period for which a slot is available for less than a full season.

(3) For LaGuardia and Washington National Airports:

(i) 6:00 a.m.–6:59 a.m.

(ii) 10:00 p.m.–midnight.

(b) Slots will be allocated only to operators with the economic and operating authority and aircraft required to use the slots.

(c) Requests for allocations under this section shall be submitted in writing to the address listed in § 93.221(a)(1) and shall identify the request as made under § 93.226.

(d) The FAA may deny requests made under this section after a determination that all remaining slots in a particular category should be distributed by lottery.

(e) Slots may be allocated on a seasonal or temporary basis under this provision.

10. By revising § 93.227(i) and adding new paragraphs (j) and (k) to read as follows:

§ 93.227 Slot use and loss.

* * * * *

(i) Every air carrier and commuter operator or other person holding a slot at a high density airport shall, within 14 days after the last day of the 2-month period beginning January 1, 1986, and every 2 months thereafter, forward, in writing, to the address identified in § 93.221(a)(1), a list of all slots held by the air carrier, commuter operator or

other person along with a listing of which air carrier or commuter operator actually operated the slot for each day of the 2-month period. The report shall identify the flight number for which the slot was used and the equipment used, and shall identify the flight as an arrival or departure. The report shall identify any common ownership or control of, by, or with any other carrier as defined in § 93.213(c) of this Subpart. The report shall be signed by a senior official of the air carrier or commuter operator. If the slot is held by an "other person," the report must be signed by an official representative.

(j) The Chief Counsel of the FAA may waive the requirements of paragraph (a) of this section in the event of a highly unusual and unpredictable condition which is beyond the control of the slot-holder and which exists for a period of 9 or more days. Examples of conditions which could justify waiver under this paragraph are weather conditions which result in the restricted operation of an airport for an extended period of time or the grounding of an aircraft type.

(k) The Chief Counsel of the FAA may, upon request, grant a waiver from the requirements of paragraph (a) of this section for a slot used for the domestic segment of an intercontinental all-cargo flight. To qualify for a waiver, a carrier must operate the slot a substantial percentage of the time and must return the slot to the FAA in advance for the time periods it will not be used.

Issued in Washington, DC, on June 10, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-13415 Filed 6-11-86; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
June 13, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 61, and 91

Preflight Assembly of Gliders and Balloons; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 61, and 91

[Docket No. 25011; Notice No. 86-8]

Preflight Assembly of Gliders and Balloons

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to discontinue classifying glider and balloon assembly as preventive maintenance, except in certain circumstances; add training requirements for pilots in preflight assembly of gliders and balloons; and add preflight assembly and post assembly inspections to the preflight responsibilities for glider and balloon pilots. The amendments are needed to ensure the continued assignment of responsibilities for preflight assembly and inspection of gliders and balloons while simultaneously reducing the recording burden on the public.

DATE: Comments must be received on or before September 11, 1986.

ADDRESSES: Mail or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25011, Room 916, 800 Independence Ave., SW., Washington, DC 20591. Comments mailed or delivered must be identified with "Docket No. 25011." Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Charles W. Schaffer, General Aviation and Commercial Branch (AFS-340), Aircraft Maintenance Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone (202) 426-8203.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they deem appropriate. Comments relating to the impact the proposal may have on economics, small businesses, energy resources, or the environment are also invited. All comments received on or before the specified closing date will be considered by the Administrator before final action on the proposal. The proposal may be changed as a result of the comments received. All comments will be available, both before and after the closing date for comments, for examination in the Rules Docket, Room 916, weekdays between 8:30 a.m. and 5 p.m. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerning this rulemaking action will be made a part of the docket. Commenters wishing acknowledgement of receipt by the FAA must submit, with their comments, a self-addressed stamped, postcard, bearing the statement: "Comments on Docket No. 25011." The card will be dated, time stamped, and return to the sender.

Availability of NPRM

A copy of this notice of proposed rulemaking may be obtained by a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8050. The request must identify the NPRM by notice number. Persons who want to be placed on a mailing list to receive future NPRM's should request Advisory Circular 11-2A, which describes application procedures.

Background

Part 43, Appendix A, paragraph (c), classifies the installation of certain glider wings as preventive maintenance. Paragraph (c) was amended (Amendment No. 43-23; 47 FR 41076; September 16, 1982) to add preflight assembly of balloons to the list of preventive maintenance.

Prior to amendment, balloon assembly classification was in dispute. Some persons considered it maintenance while others viewed it as an operational function. Classification as preventive maintenance in Amendment No. 43-12 (34 FR 14423; September 16, 1969) was intended to unify these viewpoints, utilizing the concept used successfully with gliders for many years. Public comment invited prior to amendment brought only positive comment.

Amendment No. 43-23 simultaneously amended § 43.9 to require the performance and approval for return to service of preventive maintenance to be recorded in the aircraft records. Shortly after the amendment became effective, the FAA received the first of what became numerous complaints about the new recordkeeping requirement from glider and balloon operators and their associations. In response, the FAA agreed to review the matter.

Discussion

A review of the situation revealed that, while § 43.9, as amended, requires preventive maintenance to be recorded, § 91.173(b)(1) requires the record to be retained only until the work is repeated (i.e., until the glider or balloon is reassembled for the next flight). While § 43.9 is appropriate and works well for other aircraft, it does not work for gliders and balloons because they are assembled so frequently.

The pilot-in-command is, by virtue of § 91.29, responsible for proper assembly of the glider or balloon, whether or not the assembly operation is recorded. Further, the pilot-in-command has typically performed the assembly of gliders and balloons without recording the work for many years. FAA records of accidents and incidents do not indicate that improper assembly has played a significant role in glider or balloon accidents. Therefore, the FAA has decided to classify the installation of glider wings and tail surfaces, specifically designed for quick disassembly and assembly, and the installation of balloon baskets and burners, specifically designed for quick removal, assembly of gliders and balloons as operational functions. To ensure that pilots recognize their responsibilities and are competent to perform the assembly and preflight inspection properly, Part 61 of the FAR would be amended to reference gliders and balloons in the flight proficiency requirements of §§ 61.107 and 61.127.

The type certificate data of some balloons permit multiple models of baskets to be used on some envelopes. The interchange of these components is as simple to perform as a normal preflight assembly. The additional step of determining the eligibility for interchange is similar to the pilot-in-command process of determining that an aircraft is properly equipped for the flight being conducted. The FAA has determined, however, that when component interchange is involved, preflight assembly will continue to be classified as preventive maintenance. The recording requirements associated with preventive maintenance are necessary to provide record continuity for interchanged components so that compliance with required inspections, Airworthiness Directives, etc., can be determined.

Paperwork Reduction Act

This proposed regulation would reduce a recordkeeping burden approved for 14 CFR 43.9 by the Office of Management and Budget under the

provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) (OMB Control Number 2120–20). Specific comments on this reduction should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503, Attention FAA Desk Officer (Telephone: 202–395–7313). A copy should be submitted to the FAA Docket.

Economic Summary

The FAA proposes to amend Parts 43 and 61 to discontinue classifying glider and balloon assembly as preventive maintenance, except in certain circumstances; add training requirements for pilots in preflight assembly of gliders and balloons; and add preflight assembly and post assembly inspections to the preflight responsibilities for glider and balloon pilots. The proposed editorial changes to Part 91 are intended to make the proposed changes to Parts 43 and 61 consistent with the maintenance record requirements of Part 91. The primary objective of the proposal is to ensure the continued assignment of responsibilities for preflight assembly and post assembly inspection of gliders and balloons and at the same time reduce the recordkeeping burden on the public.

The principal area of interest in the proposal is the change affecting the installation of glider wings and tail surfaces, specifically designed for quick disassembly and assembly by pilots, and the installation of balloon baskets and burners, specifically designed for quick removal by the pilot. The deletion of these requirements from the list of items classified as preventive maintenance in Appendix A to Part 43 would relieve glider and balloon operators from the burden of complying with the recordkeeping requirements of § 43.9 for the preflight assembly of gliders and balloons without a derogation of safety. Thus, these amendments would involve only unquantifiable benefits since glider and balloon operators would no longer be required to make the maintenance record entries specified by § 43.9. The FAA has determined that this proposal will not affect international trade, nor is it expected to have a significant economic impact on a substantial number of small entities since there are no costs associated with this proposal.

Conclusion

Because this proposed amendment would reduce the recordkeeping burden on the public and for the reasons discussed earlier in the Economic Summary, the Regulatory Flexibility Determination, and the Trade Impact Assessment, the FAA has determined that this document proposes a regulation that is not a major one under Executive Order 12291 and is not significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11064; February 26, 1979). In addition, since this proposal will not impose any costs, it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

A draft Regulatory Evaluation has been prepared and placed in the Docket. A copy of the evaluation may be obtained by contacting the person identified in the for further information contact paragraph.

List of Subjects

14 CFR Part 43

Maintenance, Preventive maintenance, Safety, Airmen, Aircraft, Inspection, Approvals, Performance rules, Recordkeeping.

14 CFR Part 61

Private pilots, Flight instructors, Certification, Certificates, Aviation safety, Training.

14 CFR Part 91

Aviation Safety, Safety, Aircraft, Aircraft pilots, Pilots, Standards.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend Parts 43, 61, and 91 of the Federal Aviation Regulations (14 CFR Parts 43, 61, and 91) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance—[Amended]

2. By amending Appendix A by removing paragraph (c)(25) and by redesignating paragraphs (c)(26) through (c)(29) as paragraphs (c)(25) through (28), respectively.

Explanation: The installation of glider wings and tail surfaces, specifically designed for quick disassembly and assembly by pilots, no longer would be considered preventive maintenance, and the recordkeeping requirements of § 43.9 for that preflight assembly would be eliminated. Deletion of paragraph (c)(25) would require renumbering of succeeding paragraphs to maintain continuity.

3. By amending Appendix A by revising newly redesignated paragraph (c)(27) to read as follows:

(27) The interchange of balloon baskets and burners on envelopes when the basket or burner is designated as interchangeable in the balloon type certificate data and the baskets and burners are specifically designed for quick removal and installation.

* * * * *

Explanation: Revising newly redesignated paragraph (c)(27) in the appendix would remove the installation of baskets and burners, specifically designed for quick removal by the pilot, from the list of items classified as preventive maintenance and, in so doing, the recordkeeping requirements of § 43.9 for the preflight assembly of balloons. However, the interchange of baskets and burners on balloon envelopes, when provided for in the balloon type certificate data, would still be categorized as preventive maintenance, and the recording requirements of § 43.9, the limitations of § 43.7, and the provisions of § 91.167 would still be applicable.

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

4. The authority citation for Part 61 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

5. By amending § 61.107 by revising paragraph (d)(1) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(d) *In gliders.* (1) Preflight operation, including the installation of wings and trail surfaces specifically designed for quick removal and installation by pilots, and line inspection.

* * * * *

Explanation: This proposal would expand the term "preflight operation" to include specifically the proper preflight assembly of wings and tail surfaces. It would retain all previous requirements of the rule without change.

§ 61.107 [Amended]

6. By amending § 61.107 by revising paragraph (f)(1) to read as follows:

* * * * *

(f) *In free balloons.* (1) Rigging and mooring, including the installation of baskets and burners specifically designed for quick removal or installation by a pilot; and the interchange of baskets or burners, when provided for in the type certificate data, classified as preventive maintenance,

and subject to the recording requirements of § 43.9 of this chapter.

* * * * *

Explanation: This proposal would include specific training requirements for the preflight assembly of baskets and burners to envelopes as part of presently required rigging. It would retain all other existing requirements without change.

7. By amending § 61.127 by revising paragraph (f)(1) to read as follows:

§ 61.127 Flight proficiency.

* * * * *

(f) *Free balloons.* (1) Assembly of basket and burner to the envelope, rigging, inflating, and mooring of a free balloon;

* * * * *

Explanation: The reasons for amending § 61.107 also apply to § 61.127.

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) Revised, Pub. L. 97-449, January 12, 1983).

§ 91.173 [Amended]

9. By amending § 91.173(a)(1) by inserting the phrase ", preventive maintenance," after the word "maintenance".

Explanation: These editorial changes would make the language of § 91.173 consistent with that of § 1.1, § 43.9, and the remainder § 91.173.

Issued in Washington, DC, on June 6, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86-13326 Filed 6-12-86; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday,
June 13, 1986

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 367]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 367 establishes the quantity of such fruit that may be shipped to market during the period June 13–19, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 367 (§ 908.667) is effective for the period June 13–19, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the delcared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on June 10, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is moderate.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engaged in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges, Valencias.

1. The authority citation for 7 CFR Part 908 continues to read:

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

2. Section 908.667 is added to read as follows:

§ 908.667 Valencia Orange Regulation 367.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 13, 1986, through June 19, 1986, are established as follows:

(a) District 1: 336,000 cartons;

(b) District 2: 364,000 cartons;

(c) District 3: Unlimited cartons.

Dated: June 11, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–13504 Filed 6–12–86; 11:51 am]

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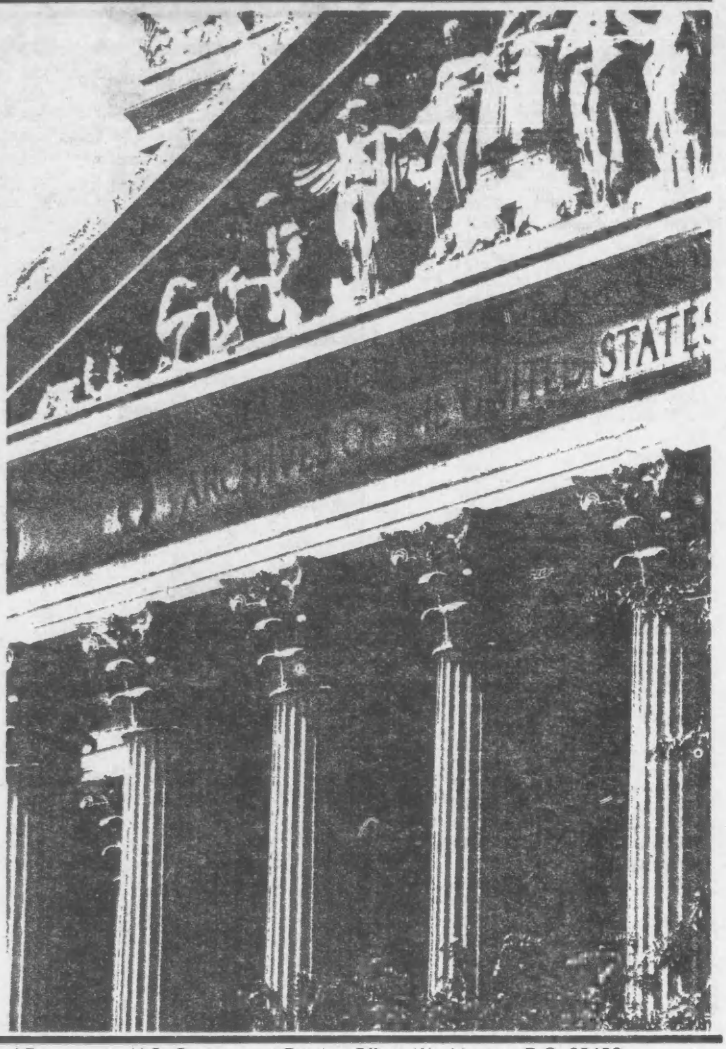

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